(15,625.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 741.

FRANCIS A. COFFIN AND PERCIVAL B. COFFIN, PLAINTIFFS IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

INDEX.

	Original.	Print.
Citation	*a*	1
Proof of service of citation	*b*	1
Writ of error	*c*	1
Caption	1	2
Indictment	2	2
Order filing recognizance bonds	39	64
Arraignment and plea	40	64
Recognizance	40	64
Arraignment and plea	41	65
Recognizance	41	65
Arraignment and plea	42	65
Recognizance	42	65
Order beginning first trial	42	65
Order continuing first trial	44	66
Order continuing first trial	45	66
Order continuing first trial	46	66
Order continuing first trial	47	67

JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., SEPTEMBER 26, 1894.

	Original.	Print.
Order continuing first trial	48	67
Order continuing first trial	49	67
Order continuing first trial	50	67
Order continuing first trial	51	67
Order discharging jury	51	67
Motion for postponement of trial	52	68
Affidavit of Francis A. Coffin	52	68
Motion for separate trial	59	72
Affidavit of Albert S. Reed	60	72
Order overruling motions	63	74
Order beginning second trial	64	74
Orders continuing second trial	64	74
Orders continuing second trial	65	74
Orders continuing second trial	66	76
Orders continuing second trial	67	76
Orders continuing second trial	68	77
Orders continuing second trial	69	77
Motion to require the Government to elect and specify	70	77
Order overruling motion and continuing trial	71	78
Order filing bill of exceptions	71	78
Bill of exceptions	71	78
Motion to require the Government to elect and specify	72	79
Motion overruled	73	79
Judge's certificate	73	79
Orders continuing second trial	74	80
Order filing bill of exceptions	75	80
Bill of exceptions	76	80
Motion for postponement of trial	76	80
Affidavit of Francis A. Coffin	76	81
Motion overruled	84	85
Judge's certificate	84	85
Orders continuing second trial	85	85
Orders continuing second trial	86	85
Orders continuing second trial	87	86
Order concluding second trial	87	86
Verdict	88	86
Order granting time to file bill of exceptions	88	87
Order increasing amount of bail	88	87
Order filing motion for new trial	89	87
Motion for new trial	90	87
Order overruling motion for new trial	95	90
Motion in arrest of judgment	95	90
Order on motion in arrest of judgment	95	90
Judgment	96	90
Order filing bill of exceptions	97	91
Bill of exceptions	98	91
Statement of evidence	98	91
Testimony of Edward Hawkins	107	96
Lewis J. Robinson	116	100
L. V. Horton	120	103
Statement of evidence	123	104
Defendant's requests for instructions	131	108
Charge to the jury	175	124

	Original.	Print.
Exceptions to charge	189	139
Motion in arrest of judgment	202	146
Judge's certificate	205	147
Order filing petition for writ of error	205	147
Petition for writ of error	206	148
Assignment of errors	208	148
Recognizance	261	173
Clerk's certificate	263	174
Order of Mr. Justice Harlan allowing writ of error and granting bail	264	174
Clerk's certificate	266	175

a UNITED STATES OF AMERICA, *ss:*

To the United States of America, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the district of Indiana, wherein Francis A. Coffin and Percival B. Coffin — plaintiffs in error and you are defendant in error, to show cause, if any there be, why the judgement rendered against the said plaintiffs in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John M. Harlan, associate justice Supreme Court of the United States, this thirteenth day of June, in the year of our Lord one thousand eight hundred and ninety-four.

[Seal Circuit Court of the United States, District of Indiana.]

JOHN M. HARLAN,
Associate Justice Supreme Court of the United States.

b [Endorsed:] 4926. Supreme Court of the United States. United States *vs.* Francis A. Coffin & Percival B. Coffin. Citation. Filed Jun- 15, 1894. Noble C. Butler, clerk.

On this 15th day of June, in the year of our Lord one thousand eight hundred and ninety-four, personally appeared John E. Foley before me, the subscriber, clerk of the United States district court for the district of Indiana, and makes oath that he delivered a true copy of the within citation to Frank B. Burke, United States district attorney for the district of Indiana.

JOHN E. FOLEY.

Sworn to and subscribed the 15 day of June, A. D. 1894.

[Seal District Court of the United States, District of Indiana.]

NOBLE C. BUTLER,
Clerk U. S. District Court, Dist. of Ind.

Service, 2.00.

c UNITED STATES OF AMERICA:

The President of the United States of America to the judge of the district court of the United States for the district of Indiana, Greeting:

Because on the record and proceedings, as also on the rendition of a judgment in a plea which is in the said district court, before you, between The United States of America and Francis A. Coffin and Percival B. Coffin, a manifest error hath happened, to the great damage of the said Francis A. Coffin and Percival B. Coffin, as by *his* complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done

to the parties on this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington 30 days from the date hereof, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Seal Circuit Court of the United States, District of Indiana.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, this 14th day of June, A. D. 1894.

NOBLE C. BUTLER, *Clerk.*

1 Pleas of the district court of the United States for the district of Indiana, begun and holden at the United States court-house, in the city of Indianapolis, in said district, on the first Tuesday of May, in the year of our Lord one thousand eight hundred and ninety-four, before the Honorable John H. Baker, judge of the district court of the United States for the district of Indiana.

UNITED STATES *vs.* FRANCIS A. COFFIN, PERCIVAL B. COFFIN, and ALBERT S. REED.	No. 4926. Violation of National Banking Law.

Be it remembered that heretofore, to wit, at the November term of said court, on the 21st day of December, 1893, the grand jurors of the United States, impanelled and sworn to inquire for the United States within and for the body of said district, returned into court an indictment in the above-entitled cause, endorsed by their foreman "a true bill," in the words following, to wit:

2 UNITED STATES OF AMERICA, *District of Indiana,* } *ss:*

In the District Court of the United States for the District of Indiana, November Term, A. D. 1893, at Indianapolis.

The grand jurors of the United States, within and for the district of Indiana, impaneled, sworn and charged in said court, at the term aforesaid, to inquire for the United States, within and for the district aforesaid, upon their oaths present, that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the first day of March, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey then and there being president of a certain national banking association then and there known as the Indianapolis National Bank of the city of

Indianapolis, in the State and district of Indiana, which said association had been theretofore organized and created under and by virtue of the laws of the United States of America, and which said association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, unlawfully, willfully and feloniously misapply the moneys, funds and credits of said association, with intent to injure and defraud said association, in a large sum, to wit: the sum of five thousand eight hundred and two dollars and eighty-four cents; that is to say: The Indianapolis Cabinet Company of Indianapolis, Indiana, presented to said bank and to the said Theodore P. Haughey, as such president thereof, a certain bill of exchange, drawn by said Indianapolis Cabinet Company on the Indianapolis Desk Company of London, England, for the sum of one thousand one hundred and ninety-four pounds sterling, and due on June 1st, 1893, which said bill of exchange was received by said Theodore P. Haughey, and placed to the credit of the said Indianapolis Cabinet Company upon the books of said bank, and the said Indianapolis Cabinet Company thereupon drew its check for said sum upon the said bank, which check was then and there paid by said bank, under the direction of said Theodore P. Haughey; that said Indianapolis Desk Company of London, England, did not owe said Indianapolis Cabinet Company any sum whatever; that said Theodore P. Haughey failed and refused to send said bill of exchange forward for collection whereby said sum was lost to said association; that said sum was so wilfully misapplied to the use and benefit of the Indianapolis Cabinet Company as aforesaid. That as such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said National Banking Association, with the custody, control and care of the moneys, funds, credits and assets of said association, and the general superintendence of its affairs.

And the grand jurors aforesaid do further say that Francis A. Coffin, Percival B. Coffin and Albert S. Reed, at the district and State of Indiana aforesaid did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud said association, on to wit: the first day of March, in the year of our Lord, one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, as aforesaid to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, to wit: the sum of five thousand eight hundred and two dollars and eighty-four cents.

Contrary to the form of the statute of the United States in such case, made and provided and against the peace and dignity of the United States of America.

Second count.

The grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the twentieth day of February,

in the year of our Lord, one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being the president of a certain national banking association, then and there known and designated as the Indianapolis National Bank of Indianapolis, in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, unlawfully, feloniously and willfully misapply the moneys, funds and credits of the said association without authority of the directors thereof with intent to convert the same to the use of the Indianapolis Cabinet Company and to other persons, to the grand
3 jurors unknown, in a large sum, to wit: the sum of eight thousand six hundred and twenty-six dollars and fifty cents, by then and there causing said sum to be paid out of the moneys, funds and credits of said association, upon a check drawn upon said association by the Indianapolis Cabinet Company, which check was then and there cashed and paid out of the moneys, funds and credits of said association aforesaid, which said sum aforesaid, and no part thereof, was said Indianapolis Cabinet Company entitled to withdraw from said bank, because said company had no funds in said association to its credit. That said Indianapolis Cabinet Company was then and there insolvent as the said Theodore P. Haughey then and there well knew whereby said sum became lost to said association; that all of said acts as aforesaid were done with intent to injure and defraud said association. That as such president aforesaid the said Theodore P. Haughey was entrusted and charged by the board of directors of said national banking association with the care custody and control of the funds credits and assets of said association and the general superintendence of its affairs.

And the grand jurors aforesaid do further say that Francis A. Coffin, Percival B. Coffin and Albert S. Reed at the district and State of Indiana aforesaid did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud said association, on to wit: the twentieth day of February, in the year of our Lord, one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, as aforesaid to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, to wit: the sum of eight thousand six hundred and twenty-six dollars and fifty cents.

Contrary to the form of the statute of the United States in such case, made and provided, and against the peace and dignity of the United States of America.

Third count.

The grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the twenty-first day of December, in the year of our Lord, one thousand eight hundred and

ninety-two, the said Theodore P. Haughey, then and there being the president of a certain national banking association, then and there known and designated as the Indianapolis National bank, in the city of Indianapolis, in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, in the State of Indiana, did then and there, by virtue of his said office as president of said bank, unlawfully, feloniously and willfully misapply the moneys, funds and credits of the said association which were then and there under his control with intent to convert the same to the use of the Indianapolis Cabinet Company and to other persons, to the grand jurors unknown, in a large sum, to wit: the sum of six thousand three hundred and eighteen dollars, by then and there causing said sum to be paid out of the moneys, funds and credits of said association, upon a check drawn upon said association by the Indianapolis Cabinet Company, which check was then and there cashed and paid out of the moneys, funds and credits of said association aforesaid, which said sum aforesaid, and no part thereof, was said Indianapolis Cabinet Company entitled to withdraw from said bank, because said company had no funds in said association to its credit. That said Indianapolis Cabinet Company was then and there insolvent as the said Theodore P. Haughey then and there well knew whereby said sum became lost to said association; that all of said acts as aforesaid were done with intent to injure and defraud said association. That as such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said national banking association, with the custody, control and care of the moneys, funds, credits and assets of said association, and the general superintendence of its affairs.

And the grand jurors aforesaid do further say that Francis A. Coffin, Percival B. Coffin and Albert S. Reed, at the district and State of Indiana aforesaid did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud said association, on to wit: the twenty-first day of December, in the year of our Lord, one thousand eight hundred and ninety-two, aid and abet the said Theodore P. Haughey, as aforesaid to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds, credits of said association, to wit: the sum of six thousand three hundred and eighteen dollars.

Contrary to the form of the statute of the United States in such case, made and provided and against the peace and dignity of the United States of America.

Fourth count.

The grand jurors aforesaid, upon their oath aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the twentieth day of May, in the year of our Lord, one thousand eight hundred and ninety-

three, the said Theodore P. Haughey, then and there being the president of a certain national banking association, then and there known and designated as the Indianapolis National bank, in the city of Indianapolis, in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which said association was then and there carrying on a banking business in the city of Indianapolis, in the State of Indiana, did then and there by virtue of his said office as president of said bank, unlawfully, feloniously and willfully misapply the moneys, funds and credits of the said association, which were then and there under his control, with intent to convert the same to the use of the Indianapolis Cabinet Company and to other persons, to the grand jurors unknown, in a large sum, to wit: the sum of three thousand, two hundred and seventy-two dollars and twenty-nine cents, by then and there paying and causing said sum to be paid out of the moneys, funds and credits of said association upon certain divers checks drawn upon said association by the Indianapolis Cabinet Company, which checks were then and there cashed and paid out of the moneys, funds and credits of said association aforesaid, which said sum aforesaid, and no part thereof was said Indianapolis Cabinet Company entitled to withdraw from said bank, because said company had no funds in said association to its credit. That said Indianapolis Cabinet Company was then and there insolvent, as the said Theodore P. Haughey, then and there well knew whereby said sum became lost to said association; and all of said acts as aforesaid were done with intent to injure and defraud said association. That as such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said national banking association, with the custody, control and care of the moneys, funds, credits and assets of said association, and the general superintendence of its affairs.

And the grand jurors aforesaid do further say that Francis A. Coffin, Percival B. Coffin and Albert S. Reed, at the district and State of Indiana aforesaid did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud said association, on to wit: the twentieth day of May, in the year of our Lord, one thousand eight hundred and ninety-three aid and abet the said Theodore P. Haughey, as aforesaid to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, to wit: the sum of three thousand two hundred and seventy-two dollars and twenty-nine cents.

Contrary to the form of the statute of the United States in such case, made and provided and against the peace and dignity of the United States of America.

Fifth count.

The grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the tenth day of December, in

the year of our Lord one thousand eight hundred and ninety-two, the said Theodore P. Haughey, then and there being the president of a certain national banking association, then and there known and designated as the Indianapolis National bank, in the city of Indianapolis, in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of the bank, unlawfully, feloniously and willfully misapply the moneys, funds and credits of the said association, without authority of the directors thereof, with intent to convert the same to the use of the Indianapolis Cabinet Company and to other persons, to the grand jurors unknown, in a large sum, to wit: the sum of seven thousand and six dollars, by then and there paying and causing to be paid out of the moneys, funds and credits of said association upon certain divers checks drawn upon said association by the Indianapolis Cabinet Company, which checks were then and there cashed and paid out of the moneys, funds and credits of said association aforesaid, which said sum aforesaid, and no part thereof was said Indianapolis Cabinet Company entitled to withdraw from said bank, because said company had no funds in said association to its credit. That said Indianapolis Cabinet Company was then and there insolvent as the said Theodore P. Haughey then and there well knew; that all of said acts as aforesaid were done with intent to injure and defraud said association. That such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said national banking association, with the custody, control and care of the moneys, funds, credits and assets of said association, and the general superintendence of all its affairs.

And the grand jurors aforesaid do further say that Francis A. Coffin, Perceival B. Coffin and Albert S. Reed, at the district and State of Indiana aforesaid did unlawfully, willfully knowingly and feloniously and with intent to injure and defraud said association, on to wit: the tenth day of December, in the year of our Lord, one thousand eight hundred and ninety-two aid and abet the said Theodore P Haughey, as aforesaid, to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, to wit: the sum of seven thousand and six dollars, aforesaid.

5 Contrary to the form of the statute of the United States in such case, made and provided and against the peace and dignity of the United States of America.

Sixth count.

The grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the tenth day of January, in the year of our Lord, one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being the president of a certain national banking association, then and there known and

designated as the Indianapolis National bank, in the city of Indianapolis, in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, unlawfully, feloniously and willfully misapply the moneys, funds and credits of the said association, without authority of the directors thereof with intent to convert the same to the use of the Indianapolis Cabinet Company and to other persons, to the grand jurors unknown, in a large sum, to wit: the sum of four thousand, one hundred and thirty-one dollars, by then and there paying and causing said sum to be paid out of the moneys, funds and credits of said association upon certain divers checks drawn upon said association by the Indianapolis Cabinet Company, which checks were then and there cashed and paid out of the moneys, funds and credits of said association aforesaid, which said sum aforesaid, and no part thereof was said Indianapolis Cabinet Company entitled to withdraw from said bank, because said company had no funds in said association to its credit. That said Indianapolis Cabinet Company was then and there insolvent as the said Theodore P. Haughey then and there well knew whereby said sum became lost to said association; that all of said acts as aforesaid were done with intent to injure and defraud said association. That as such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said national banking association, with the custody, control and care of the moneys, funds, credits and assets of said association, and the general superintendence of all its affairs.

And the grand jurors aforesaid do further say that Francis A. Coffin, Perceival B. Coffin and Albert S. Reed at the State and district of Indiana aforesaid did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud said association, on to wit: the tenth day of January, in the year of our Lord, one thousand eight hundred and ninety-three aid and abet the said Theodore P. Haughey, as aforesaid, to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, to wit: the sum of four thousand one hundred and thirty-one dollars, aforesaid.

Contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Seventh count.

The grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the second day of December, in the year of our Lord, one thousand eight hundred and ninety-two, the said Theodore P. Haughey, then and there being the president of a certain national banking association, then and there known and designated as the Indianapolis National bank, in the city of Indianapolis in the State of Indiana, which said association had

been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, unlawfully, feloniously and willfully misapply the moneys, funds and credits of the said association, without authority of the directors thereof, with intent to convert the same to the use of the Indianapolis Cabinet Company and to other persons, to the grand jurors unknown, in a large sum, to wit: the sum of five thousand, two hundred and ninety-seven dollars, and forty cents, by then and there paying and causing said sum to be paid out of the moneys, funds and credits of said association upon certain divers checks drawn upon said association by the Indianapolis Cabinet Company, which checks were then and there cashed and paid out of the moneys, funds and credits of said association aforesaid, which said sum aforesaid, and no part thereof, was said Indianapolis Cabinet Company entitled to withdraw from said bank, because said company had no funds in said association to its credit. That said Indianapolis Cabinet Company was then and there insolvent as the said Theodore P. Haughey then and there well knew whereby said sum became lost to said association; that all of said acts as aforesaid were done with intent to injure and defraud said association.

That as such president aforesaid, the said Theodore P.
6 Haughey was entrusted and charged by the board of directors of said national banking association with the custody, control and care of the moneys, funds, credits and assets of said association, and the general superintendence of all of its affairs.

And the grand jurors aforesaid do further say that Francis A. Coffin, Perceival B. Coffin and Albert S. Reed at the district and State of Indiana aforesaid did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud said association on to wit: the second day of December, in the year of our Lord, one thousand eight hundred and ninety-two, aid and abet the said Theodore P. Haughey as aforesaid to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, to wit: the sum of five thousand two hundred and ninety-seven dollars and forty cents aforesaid.

Contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Eighth count.

The grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the twenty-third day of September, in the year of our Lord, one thousand eight hundred and ninety-two, the said Theodore P. Haughey, then and there being the president of a certain national banking association, then and there known and designated as the Indianapolis National bank, in the city of Indianapolis, in the State of Indiana, which said association had

been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, unlawfully, feloniously and willfully misapply the moneys, funds and credits of the said association, without authority of the directors thereof, with intent to convert the same to the use of the Indianapolis Cabinet Company and to other persons, to the grand jurors unknown, in a large sum, to wit: the sum of three thousand nine hundred and sixty dollars and eighty-four cents, by then and there paying and causing said sum to be paid out of the moneys, funds and credits of said association upon certain divers checks drawn upon said association by the Indianapolis Cabinet Company, which checks were then and there cashed and paid out of the moneys, funds and credits of said association aforesaid, which said sum aforesaid, and no part thereof, was said Indianapolis Cabinet Company entitled to withdraw from said bank, because said company had no funds in said association to its credit. That said Indianapolis Cabinet Company was then and there insolvent as the said Theodore P. Haughey then and there well knew whereby said sum became lost to said association; that all of said acts as aforesaid were done with intent to injure and defraud said association. That as such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said national banking association, with the custody, control and care of the moneys, funds, credits and assets of said association, and the general superintendence of all its affairs.

And the grand jurors aforesaid do further say that Francis A. Coffin and Percival B. Coffin and Albert S. Reed at the district and State of Indiana aforesaid did unlawfully, willfully, knowingly, and feloniously and with intent to injure and defraud said association on to wit: the twenty-third day of September, in the year of our Lord, one thousand eight hundred and ninety-two, aid and abet the said Theodore P. Haughey, as aforesaid, to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, to wit: the sum of three thousand nine hundred and sixty dollars and eighty-four cents aforesaid.

Contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Ninth count.

The grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the fourteenth day of July, in the year of our Lord, one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being the president of a certain national banking association, then and there known and designated as the Indianapolis National bank, in the city of Indianapolis in the State of Indiana, which said association had

been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, and without authority of the board of directors, unlawfully, feloniously and willfully misapply the moneys, funds and credits of the said association, with intent to convert the same to the use of the Indianapolis Cabinet Company and to other
7 persons, to the grand jurors unknown, in a large sum, to wit: the sum of three thousand four hundred and sixty-seven dollars and twenty-three cents, by then and there paying and causing said sum to be paid out of the moneys, funds and credits of said association upon certain divers checks drawn upon said association by the Indianapolis Cabinet Company, which checks were then and there cashed and paid out of the moneys, funds and credits of said association aforesaid, which said sum aforesaid, and no part thereof, was said Indianapolis Cabinet Company entitled to withdraw from said bank, because said company had no funds in said association to its credit. That said Indianapolis Cabinet Company was then and there insolvent as the said Theodore P. Haughey then and there well knew whereby said sum became lost to said association; that all of said acts as aforesaid were done with intent to injure and defraud said association. That as such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said national banking association with the custody, control and care of the moneys, funds, credits and assets of said association, and the general superintendence of all of its affairs.

And the grand jurors aforesaid do further say that Francis A. Coffin, Perceival B. Coffin and Albert S. Reed, at the district and State of Indiana aforesaid did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud said association on to wit: the fourteenth day of July, in the year of our Lord, one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, as aforesaid, to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, to wit: the sum of three thousand four hundred and sixty-seven dollars and twenty-three cents aforesaid.

Contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Tenth count.

The grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the eighteenth day of February, in the year of our Lord, one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being the president of a certain national banking association, then and there known and designated as the Indianapolis National Bank of the City of Indianapolis in the State of Indiana, which said association

had been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, and without authority of the board of directors, unlawfully, feloniously and willfully misapply the moneys, funds and credits of the said association, with intent to convert the same to the use of the Indianapolis Cabinet Company and to other persons to the grand jurors unknown, in a large sum, to wit: the sum of five thousand five hundred and twenty-five dollars, by then and there paying and causing said sum to be paid out of the moneys, funds and credits of said association upon certain divers checks drawn upon said association by the Indianapolis Cabinet Company, which checks were then and there cashed and paid out of the moneys, funds and credits of said association aforesaid, which said sum aforesaid, and no part thereof, was said Indianapolis Cabinet Company entitled to withdraw from said bank, because said company had no funds in said association to its credit; that said sum has been thereby wholly lost to said association. That said Indianapolis Cabinet Company was then and there insolvent as the said Theodore P. Haughey then and there well knew; that all of said acts as aforesaid were done with intent to injure and defraud said association. That as such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said national banking association with the custody, control and care of the moneys, funds, credits and assets of said association, and the general superintendence of its affairs.

And the grand jurors aforesaid do further say that Francis A. Coffin, Perceival B. Coffin and Albert S. Reed, at the district and State of Indiana aforesaid, did unlawfully, wilfully, knowingly and feloniously and with intent to injure and defraud said association on to wit: the eighteenth day of February, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, as aforesaid, to wrongfully, unlawfully, feloniously and wilfully misapply the moneys, funds and credits of said association, to wit: the sum of five thousand five hundred and twenty-five dollars aforesaid.

Contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States of America.

8 Eleventh count.

The grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the seventeenth day of June, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being the president of a certain national banking association, then and there known and designated as the Indianapolis National bank, of Indianapolis, in the State of Indiana, which said association had been heretofore

created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there by virtue of his said office as president of said bank, and without authority of the board of directors, unlawfully, feloniously and willfully misapply the moneys, funds and credits of the said association, with intent to convert the same to the use of the Indianapolis Cabinet Company and to other persons, to the grand jurors unknown, in a large sum, to wit: the sum of one thousand eight hundred and fifty dollars, by then and there paying and causing said sum to be paid out of the moneys, funds and credits of said association upon certain divers checks drawn upon said association by the Indianapolis Cabinet Company, which checks were then and there cashed and paid out of the moneys, funds and credits of said association aforesaid, and no part thereof was said Indianapolis Cabinet Company entitled to withdraw from said bank, because said company had no funds in said association to its credit; that said sum had been thereby wholly lost to said association; that said Indianapolis Cabinet Company was then and there insolvent as the said Theodore P. Haughey then and there well knew; that all of said acts as aforesaid were done with intent to injure and defraud said association. That as such president, he was entrusted and charged by the board of directors of said national banking association with the custody, control and care of the funds, credits and assets of said association and the general superintendence of its affairs, and was the duly authorized officer and agent of said association in the transaction of all its business.

And the grand jurors aforesaid do further say that Francis A. Coffin, Perceival B. Coffin and Albert S. Reed, at the district and State of Indiana aforesaid, did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud said association on to wit: the seventeenth day of June, in the year of our Lord, one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, as aforesaid, to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, to wit: the sum of one thousand eight hundred and fifty dollars aforesaid.

Contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States of America.

Twelfth count.

The grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the twelfth day of June, in the year of our Lord, one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being the president of a certain banking association, then and there known and designated as the Indianapolis National bank, of Indianapolis, in the State of Indiana, which said association had been heretofore created and

organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, and without authority of the board of directors, unlawfully, feloniously and willfully misapply the moneys, funds and credits of the said association, with intent to convert the same to the use of the Indianapolis Cabinet Company and to other persons, to the grand jurors unknown, in a large sum, to wit: the sum of one thousand, six hundred and ten dollars and seventy-two cents, by then and there paying and causing said sum to be paid out of the moneys, funds and credits of said association upon certain divers checks drawn upon said association by the Indianapolis Cabinet Company, which checks were then and there cashed and paid out of the moneys, funds and credits of said association aforesaid, which sum aforesaid, and no part thereof, was said Indianapolis Cabinet Company entitled to withdraw from said bank, because said company had no funds in said association to its credit; that said sum has been thereby wholly lost to said association; that said Indianapolis Cabinet Company was then and there insolvent as the said Theodore P. Haughey then and there well knew; that all of said acts as aforesaid were done with intent to injure and defraud said association. That as such president, he was entrusted and charged by the board of directors of said national banking association with the custody, control and care of the funds, credits and assets of said association and the general superintendence of its affairs, and was the duly authorized officer and agent of said association in the transaction of all its business.

9 And the grand jurors aforesaid do further say that Perceival B. Coffin, Francis A. Coffin and Albert S. Reed at the district and State of Indiana aforesaid did unlawfully, wilfully, knowingly and feloniously and with intent to injure and defraud said association on to wit: the twelfth day of June, in the year of our Lord, one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, as aforesaid, to wrongfully, unlawfully, feloniously and wilfully misapply the moneys, funds and credits of said association, to wit: the sum of one thousand six hundred and ten dollars and seventy-two cents aforesaid.

Contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States of America.

Thirteenth count.

The grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid on to wit: the ninth day of May, in the year of our Lord, one thousand eight hundred and ninety-three, and on divers times between said date and the eighteenth day of June, in the year of our Lord, one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being

the president of a certain national banking association, then and there known and designated as the Indianapolis National Bank of Indianapolis, in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, and without authority of the board of directors, unlawfully, feloniously and willfully misapply the moneys, funds and credits of the said association, with intent to convert the same to the use of the Indianapolis Cabinet Company and other persons, to the grand jurors unknown, in a large amount, to wit: the sum of ten thousand, one hundred and six dollars and eight cents, a more particular description of said moneys, funds and credits being to the grand jurors unknown, by then and there paying out and causing to be paid out of the moneys, funds and credits of said association said sum of ten thousand, one hundred and six dollars and eight cents, to the use and benefit of the Indianapolis Cabinet Company and to divers other persons, to the grand jurors unknown, upon and by virtue of divers checks and drafts drawn upon said association by said Indianapolis Cabinet Company; that during all of said time, said Indianapolis Cabinet Company had no moneys, funds or credits in said association against which it could draw, and was not entitled to withdraw any sum from said association; that said Indianapolis Cabinet Company was then and there and during all of said time insolvent, as the said Theodore P. Haughey, then and there well knew; whereby said sum was wholly lost to said association. That said willful misapplication of said funds as aforesaid, was done and made as aforesaid with intent to injure and defraud said association; that as such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said national banking association with the custody, control and care of the funds, credits and assets of said association, and the general superintendence of its affairs, and was the duly authorized officer and agent of said association in the transaction of all its business.

And the grand jurors aforesaid do further say that Francis A. Coffin, Perceival B. Coffin and Albert S. Reed, at the district and State of Indiana aforesaid did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud said association on to wit: the ninth day of May, in the year of our Lord one thousand eight hundred and ninety-three, and on divers times between said date and the eighteenth day of June, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, as aforesaid, to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, to wit: the sum of ten thousand, one hundred and six dollars and eight cents aforesaid.

Contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States of America.

Fourteenth count.

The grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid on to wit: the nineteenth day of June, in the year of our Lord, one thousand eight hundred and ninety-three, and on divers times between said date and the thirteenth day of July, in the year of our Lord, one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being the president of a certain national banking association, then and there known and designated as the Indianapolis National Bank of Indianapolis, in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, and without authority of the board of directors, unlawfully, feloniously and willfully misapply the moneys, funds and credits of the said association, with intent to convert the same to the use of the Indianapolis Cabinet Company, and other persons, to the grand jurors unknown, in a large amount, to wit: the sum of nine thousand, one hundred and thirty-two dollars and nineteen cents, a more particular description of said moneys, funds and credits being to the grand jurors unknown, by then and there paying out and causing to be paid out of the moneys, funds and credits of said association said sum of nine thousand, one hundred and thirty-two dollars and nineteen cents, to the use and benefit of the Indianapolis Cabinet Company and to divers other persons, to the grand jurors unknown, upon and by virtue of divers checks and drafts drawn upon said association by said Indianapolis Cabinet Company; that during all of said time, said Indianapolis Cabinet Company had no moneys, funds or credits in said association against which it could draw, and was not entitled to withdraw any sum from said association; that said Indianapolis Cabinet Company was then and there and during all of said time insolvent, as the said Theodore P. Haughey, then and there well knew; whereby said sum was wholly lost to said association. That said willful misapplication of said funds as aforesaid was done and made as aforesaid with intent to injure and defraud said association; that as such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said national banking association with the custody, control and care of the funds, credits and assets of said association, and the general superintendence of its affairs, and was the duly authorized officer and agent of said association in the transaction of all its business.

And the grand jurors aforesaid do further say that Francis A. Coffin, Percival B. Coffin and Albert S. Reed, at the district and State of Indiana aforesaid did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud said association on to wit: the nineteenth day of June in the year of our Lord, one thousand eight hundred and ninety-three, and on divers times be-

tween said date and the thirteenth day of July, in the year of our Lord, one thousand eight hundred and ninety-three aid and abet the said Theodore P. Haughey, as aforesaid to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, to wit: the sum of nine thousand, one hundred and thirty-two dollars and nineteen cents aforesaid.

Contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States of America.

Fifteenth count.

The grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid on to wit: the third day of March, in the year of our Lord, one thousand eight hundred and ninety-three, and on divers times between said date and the eighth day of May, in the year of our Lord, one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being the president of a certain national banking association, then and there known and designated as the Indianapolis National Bank of Indianapolis, in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, and without authority of the board of directors, unlawfully, feloniously and willfully misapply the moneys, funds and credits of the said association, with intent to convert the same to the use of the Indianapolis Cabinet Company and other persons to the grand jurors unknown, in a large amount, to wit: the sum of twelve thousand seven hundred and thirty-two dollars and fifty-one cents, a more particular description of said moneys, funds and credits being to the grand jurors unknown, by then and there, unlawfully, feloniously and willfully paying out and causing to be paid out of the moneys, funds and credits of said association said sum of twelve thousand, seven hundred and thirty-two dollars and fifty-one cents, to the use and benefit of the Indianapolis Cabinet Company and to divers other persons to the grand jurors unknown, upon and by virtue of divers checks and drafts drawn upon said association by said Indianapolis Cabinet Company; that during all of said time said Indianapolis Cabinet Company had no moneys, funds or credits in said association against which it could draw, and was not entitled to withdraw any sum from said association; that said Indianapolis Cabinet Company was then and there and during all of said time insolvent, as the said Theodore P. Haughey then and there well knew, whereby said sum was wholly lost to said association. That said willful misapplication of said funds as aforesaid, was done and made as aforesaid with intent to injure and defraud said
11 association. That as such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board

of directors of said national banking association with the custody, control and care of the funds, credits and assets of said association, and the general superintendence of its affairs, and was the duly authorized officer and agent of said association in the transaction of all its business.

And the grand jurors aforesaid do further say that Francis A. Coffin, Perceival B. Coffin and Albert S. Reed, at the district and State of Indiana aforesaid did unlawfully, willfully, knowingly and feloniously, and with intent to injure and defraud said association, on, to wit: the third day of March, in the year of our Lord, one thousand eight hundred and ninety-three, and on divers times between said date and the eighth day of May, in the year of our Lord, one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, as aforesaid, to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, to wit: the sum of twelve thousand seven hundred and thirty-two dollars and fifty-one cents aforesaid.

Contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States of America.

Sixteenth count.

The grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the eighth day of May, in the year of our Lord, one thousand eight hundred and ninety-three, and on divers times between said date and the eighteenth day of June, in the year of our Lord, one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being the president of a certain national banking association, then and there known and designated as the Indianapolis National Bank of Indianapolis, in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, and without authority of the board of directors, unlawfully, feloniously and willfully misapply the moneys, funds and credits of the said association, with intent to convert the same to the use of the Indianapolis Cabinet Company, a more particular description of said moneys, funds and credits, being to the grand jurors unknown, in a large amount, to wit: the sum of ten thousand one hundred and six dollars and eight cents, by then and there permitting and causing said sum aforesaid to be withdrawn from and paid out of the moneys, funds and credits of said association, in the form of overdrafts, upon checks drawn by said Indianapolis Cabinet Company upon said association, the said Theodore P. Haughey then and there well knowing that said Indianapolis Cabinet Company had no moneys, funds or credits in said association to its credit, and was not entitled to draw any sum from said association and that said Indian-

apolis Cabinet Company was insolvent, as the said Theodore P. Haughey then and there well knew. That said Theodore P. Haughey did all of said acts in bad faith and with intent to injure and defraud said association. That said Theodore P. Haughey as such president aforesaid, was entrusted and charged by the board of directors of said national banking association with the custody, control and care of the funds, credits and assets of said association and the general superintendence of its affairs, and was the duly authorized officer and agent of said association in the transaction of all its business.

And the grand jurors aforesaid do further say that Francis A. Coffin, Perceival B. Coffin and Albert S. Reed, at the district and State of Indiana aforesaid did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud said association, on to wit: the eighth day of May, in the year of our Lord, one thousand eight hundred and ninety-three, and on divers times between said date and the eighteenth day of June, in the year of our Lord, one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, as aforesaid to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, to wit: the sum of ten thousand one hundred and six dollars and eight cents aforesaid.

Contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States of America.

Seventeenth count.

The grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the first day of January, in the year of our Lord, one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of
12 July, in the year of our Lord, one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being the president of a certain national banking association then and there known and designated as the Indianapolis National Bank of Indianapolis, in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which said association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, and without authority of the board of directors, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, with intent to convert the same to the use of the Indianapolis Cabinet Company, a more particular description of said moneys, funds and credits being to the grand jurors unknown, in a large amount, to wit: the sum of three hundred and seventy-five thousand dollars, by then and there cashing, discounting and paying for the use and benefit of said Indianapolis Cabinet Company, out of the funds of said association, a large number of worthless and insolvent notes, drafts and bills of ex-

change being drawn upon and by divers persons, firms and companies, and corporations each and all of whom were then insolvent, as the said Theodore P. Haughey then and there well knew, whereby said sum was wholly lost to said association; with intent then and there and thereby to injure and defraud said association. That as such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said national banking association with the custody, control and care of the funds, credits and assets of said association, and the general superintendence of its affairs, and agent of said association in the transaction of all its business.

And the grand jurors aforesaid do further say that Francis A. Coffin, Perceival B. Coffin and Albert S. Reed, at the district and State of Indiana aforesaid, did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud said association on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, as aforesaid, to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds, and credits of said association, to wit: the sum of three hundred and seventy-five thousand dollars aforesaid.

Contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Eighteenth count.

The grand jurors aforesaid, upon their oath aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being the president of a certain national banking association, then and there known and designated as the Indianapolis National bank, of Indianapolis, in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there by virtue of his said office as president of said bank, and without authority of the board of directors, unlawfully, feloniously and willfully misapply the moneys, funds and credits of the said association, with intent to convert the same to the use of the Indianapolis Cabinet Company, a more particular description of said moneys, funds and credits being to the grand jurors unknown, in a large amount, to wit: the sum of three hundred and seventy-five thousand dollars, by then and there cashing, discounting and paying for the use and benefit of said Indian-

apolis Cabinet Company, out of the funds of said association, a large number of worthless and insolvent notes, drafts and bills of exchange, said notes, drafts and bills of exchange being drawn upon and by divers persons, firms and companies, each and all of whom were then insolvent, as the said Theodore P. Haughey then and there well knew with intent then and there and thereby to injure and defraud said association. That as such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said national banking association with the custody, control and care of the funds, credits and assets of said association, and the general superintendence of its affairs, and was the duly authorized officer and agent of said association in the transaction of all its business.

And the grand jurors aforesaid do further say that Francis A. Coffin, Perceival B. Coffin and Albert S. Reed at the district and State of Indiana aforesaid did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud said association, on to wit: the first day of January, in the year of our Lord, one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, as aforesaid, to wrongfully,
13 unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, to wit: the sum of three hundred and seventy-five thousand dollars aforesaid.

Contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Nineteenth count.

The grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being president of a certain national banking association, then and there known and designated as the Indianapolis National Bank of Indianapolis, in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, and without authority of the board of directors, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, with intent then and there to convert the same to the use of the Indianapolis Cabinet Company in a large amount, to wit: the sum of three hundred and seventy-five thousand dollars. A more particular description of said moneys, funds and

credits being to the grand jurors unknown; by then and there and between said dates loaning and causing to be loaned the moneys, funds and credits of said association, to the Indianapolis Cabinet Company in the sum of three hundred and seventy-five thousand dollars, said sum being much larger than a sum equal to ten per cent. of the capital stock of said association, the capital stock of said association being then and there three hundred thousand dollars, whereby said sum of three hundred and seventy-five thousand dollars became lost to said association; with intent then and there and thereby to injure and defraud said association. That as such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said association with the custody, control and care of the moneys, funds, credits and assets of said association, and the general superintendence of its affairs and was the duly authorized officer and agent of said association in the transaction of all its business.

And the grand jurors aforesaid do further say that Francis A. Coffin, Perceival B. Coffin and Albert S. Reed, at the district and State of Indiana aforesaid did unlawfully, knowingly, willfully and feloniously and with intent to injure and defraud said association, on to wit: the first day of January in the year of our Lord one thousand eight hundred and ninety-one and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, as aforesaid to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, to wit: the sum of three hundred and seventy-five thousand dollars aforesaid.

Contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States of America.

Twentieth count.

The grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid on to wit: the first day of January, in the year of our Lord, one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being president of a certain national banking association, then and there known and designated as the Indianapolis National bank of Indianapolis, in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, and without authority of the board of directors, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, with intent then and there to convert the same to the use of the

Indianapolis Cabinet Company in a large amount, to wit: the sum of three hundred and seventy-five thousand dollars. A more particular description of such moneys, funds and credits being to the grand jurors unknown; by then and there permitting said Indianapolis Cabinet Company to overdraw their account in said sum and paying and causing said sum to be paid out of the moneys, funds and credits of said association, and to be withdrawn from said
14 association upon divers checks and drafts drawn on said association by the said Indianapolis Cabinet Company; the said Indianapolis Cabinet Company then and there not being entitled to draw any part of said sum from said association and having no moneys, funds and credits in said association to its credit on said day; said Indianapolis Cabinet Company being then and there insolvent, whereby said sum became wholly lost to said association; the said Theodore P. Haughey then and there knowing that said Indianapolis Cabinet Company was not entitled to withdraw any part of said sum from said bank and that — Indianapolis Cabinet Company was then and there insolvent: all of said acts aforesaid then and there being done and performed with the intent to injure and defraud said association. That as such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said association with the custody, control and care of the moneys, credits and assets of said association and the general superintendence of its affairs, and was the duly authorized officer and agent of said association in the transaction of all its business.

And the grand jurors aforesaid do further say that Francis A. Coffin, Perceival B. Coffin and Albert S. Reed, at the district and State of Indiana aforesaid, did unlawfully, willfully, knowingly and feloniously, and with intent to injure and defraud said association on to wit: the first day of January in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord, one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, as aforesaid to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association to wit: the sum of three hundred and seventy-five thousand dollars aforesaid.

Contrary to the form of the statute of the United States in such case, made and provided and against the peace and dignity of the United States of America.

Twenty-first count.

The grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid on to wit: the first day of January, in the year of our Lord, one thousand eight hundred and ninety-one and on divers dates and times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being president of a certain national banking association,

then and there known and designated as the Indianapolis National Bank of Indianapolis in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, and without authority of the board of directors, ununlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, with intent then and there to convert the same to the use of the Indianapolis Cabinet Company in a large sum, to wit: the sum of three hundred and seventy-five thousand dollars, a more particular description of which is to the grand jurors unknown; by then and there permitting said Indianapolis Cabinet Company to overdraw its account at said association in said sum, by paying and causing to be paid out to the said Indianapolis Cabinet Company and to its credit upon divers checks and drafts drawn by said Indianapolis Cabinet Company upon said banking association, out of the moneys, funds and credits of said association, said sum of three hundred and seventy-five thousand dollars; that said Indianapolis Cabinet Company during all of said time had no moneys, funds or credits in said association to its credit against which it could check, and said Indianapolis Cabinet Company was not entitled to check out or withdraw any part of said sum of three hundred and seventy-five thousand dollars from said association. That said Indianapolis Cabinet Company was then and there insolvent as the said Theodore P. Haughey then and there well knew, whereby said sum became lost to said association. All of said acts aforesaid being then and there done and performed by the said Theodore P. Haughey, with intent then and there to injure and defraud said association; that as such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said national banking association with the custody, control and care of the moneys, funds, credits and assets of said association, and the general superintendence of its affairs, and was the duly authorized officer and agent of said association in the transaction of all its business.

And the grand jurors aforesaid do further say that Francis A. Coffin, Perceival B. Coffin and Albert S. Reed, at the district and State of Indiana aforesaid did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud said association on to wit: the first day of January, in the year of our Lord, one thousand eight hundred and ninety-one and on divers times between said date and the twenty-fifth day of July, in the year of our Lord
15 one thousand eight hundred and ninety-three aid and abet the said Theodore P. Haughey, as aforesaid to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, to wit: the sum of three hundred and seventy-five thousand dollars aforesaid.

Contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Twenty-second count.

The grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the first day of January, in the year of our Lord, one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being president of a certain national banking association, then and there known and designated as the Indianapolis National Bank of Indianapolis, in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, as president of said bank, and without authority of the board of directors unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, with intent then and there to convert the same to the use of the Indianapolis Cabinet Company in a large amount, to wit: the sum of three hundred and seventy-five thousand dollars. A more particular description of such moneys, funds and credits being to the grand jurors unknown; by then and there permitting said Indianapolis Cabinet Company to overdraw their account in said sum and by paying and causing said sum to be paid out of the moneys, funds and credits of said association, and permitting and causing the same to be withdrawn from said association upon divers checks and drafts drawn on said association by the said Indianapolis Cabinet Company; the said Indianapolis Cabinet Company then and there not being entitled to draw any part of said sum from said association to and having no moneys, funds and credits in said association to its credit on said day; said Indianapolis Cabinet Company being then and there insolvent, the said Theodore P. Haughey then and there knowing that said Indianapolis Cabinet Company was not entitled to withdraw any part of said sum from said bank and that said Indianapolis Cabinet Company was then and there insolvent: all of said acts aforesaid then and there being done and performed with the intent to injure and defraud said association: that as such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said association with the custody, control and care of the funds, moneys, credits and assets of said association, and the general superintendence of its affairs and was the duly authorized officer and agent of said association in the transaction of all its business.

And the grand jurors aforesaid do further say that Francis A. Coffin, Perceival B. Coffin and Albert S. Reed at the district and State of Indiana aforesaid did unlawfully, willfully, knowingly, and feloniously and with intent to injure and defraud said association on to wit: the first day of January, in the year of our Lord, one thousand eight hundred and ninety-one and on divers times between said date and the twenty-fifth day of July, in the year of our Lord

one thousand eight hundred and ninety-three aid and abet the said Theodore P. Haughey, as aforesaid, to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, to wit: the sum of three hundred and seventy-five thousand dollars aforesaid.

Contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Twenty-third count.

The grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the first day of January in the year of our Lord one thousand eight hundred and ninety-one, and on divers dates and times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being president of a certain national banking association, then and there known and designated as the Indianapolis National Bank of Indianapolis in the State of Indiana, which said association had been theretofore created and organized under the laws of the United States of America, and which association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said Bank and without authority of the board of directors, unlawfully, feloniously and wilfully misapply the moneys, funds and credits of said
16 association with intent then and there to convert the same to the use of the Indianapolis Cabinet Company in a large sum, to wit: the sum of three hundred and seventy-five thousand dollars, a more particular description of which is to the grand jurors unknown; by then and there permitting said Indianapolis Cabinet Company to overdraw its account at said association in said sum by paying and causing to be paid out to said Indianapolis Cabinet Company and to its credit, upon divers checks and drafts drawn by said Indianapolis Cabinet Company upon said banking association, out of the moneys, funds and credits of said association, said sum of three hundred and seventy-five thousand dollars; that said Indianapolis Cabinet Company during all of said time had no moneys, funds or credits in said association to its credit against which it could check, and said Indianapolis Cabinet Company was not entitled to check out nor withdraw any part of said sum of three hundred and seventy-five thousand dollars from said association. That said Indianapolis Cabinet Company was then and there insolvent, as the said Theodore P. Haughey then and there well knew. All of said acts aforesaid being then and there done and performed by the said Theodore P. Haughey with intent then and there to injure and defraud said association. That as such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said national banking association with the custody,

control and care of the moneys, funds, credits and assets of said association, and the general superintendence of its affairs, and was the duly authorized officer and agent of said association in the transaction of all its business.

And the grand jurors aforesaid do further say that, Francis A. Coffin, Percival B. Coffin and Albert S. Reed at the district and State aforesaid, did unlawfully, wilfully, knowingly and feloniously and with intent to injure and defraud said association on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-three, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three aid and abet the said Theodore P. Haughey, as aforesaid to wrongfully, unlawfully, feloniously and wilfully misapply the moneys, funds and credits of said association to wit: the sum of three hundred and seventy-five thousand dollars aforesaid.

Contrary to the form of the statute of the United States in such case made and provided and against the peace and dignity of the United States of America.

Twenty-fourth count.

And the grand jurors aforesaid, upon their oath aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey then and there being president of a certain national banking association then and there known and designated as the Indianapolis National Bank of the City of Indianapolis, in the State and district of Indiana, which said association had been theretofore organized and created under the laws of the United States of America, and which said association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, and without authority of the board of directors, unlawfully, feloniously, wilfully and knowingly misapply the moneys, funds and credits of said association, with intent to convert the same to the use of the Indianapolis Cabinet Company, a more particular description of said moneys, funds and credits being to the grand jurors unknown, in a large amount, to wit: three hundred and fifty thousand dollars, by then and there, and between said dates, permitting and causing the same to be withdrawn from said association upon divers checks and drafts drawn upon said association by the said Indianapolis Cabinet Company; the said Indianapolis Cabinet Company not then and there being entitled to draw any part of said sum from said association by reason of the fact of having no moneys, funds or credits in said association to its credit; that to conceal, cover up and hide said large overdrafts from time to time the said Theodore P. Haughey received from the said Indian-

apolis Cabinet Company, and gave the said company credit therefor on the books of said association, a large number of worthless and insolvent notes, drafts and bills of exchange in a large amount, a more particular description of which is to the grand jurors unknown, executed by and drawn by and upon divers persons, firms, companies and corporations, a more particular description of which is to the grand jurors unknown, each and all of whom were then and there insolvent, as the said Theodore P. Haughey then and there well knew, whereby the greater part of said sum was lost to said association; all of said acts aforesaid being then and there done and performed with intent then and there to deceive any agent appointed and any agent and agents who might thereafter be appointed by the Comptroller of the Currency to examine the affairs of the said association, the name and names of said agent and agents being to the grand jurors unknown; the said Theo-
17 dore P. Haughey, as such president aforesaid, then and there having the custody, control and care of the moneys, funds and credits of said association.

And the grand jurors aforesaid do further say that Albert S. Reed, Francis A. Coffin and Percival B. Coffin, at the State and district of Indiana aforesaid, did then and there unlawfully, knowingly wilfully and feloniously, and with intent to deceive any agent appointed and any agent and agents who might thereafter be appointed and designated by the Comptroller of the Currency to examine the affairs of the said association, the name and names of said agent and agents being to the grand jurors unknown, on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said dates and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey as such president aforesaid, to wrongfully, unlawfully, wilfully and feloniously misapply the moneys, funds and credits of said association, to wit: the sum of three hundred and fifty thousand dollars aforesaid, contrary to the form of the statute of the United States, in such case made and provided, and against the peace and dignity of the United States of America.

Twenty-fifth count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present, that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey then and there being president of a certain national banking association then and there known and designated as the Indianapolis National Bank of Indianapolis, in the State and district of Indiana, which said association had been theretofore organized and created under the laws of the United States of America, and which said association was then and there carrying on a banking business in the city of Indianapolis, State

of Indiana, did then and there, by virtue of his said office as president of said bank, and without authority of the board of directors of said bank, unlawfully, knowingly, wilfully and feloniously misapply the moneys, funds and credits of said association with intent to convert the same to the use of the Indianapolis Cabinet Company, a more particular description of said moneys, funds and credits being to the grand jurors unknown, in a large amount to wit: three hundred and fifty thousand dollars, by then and there, and between said dates, permitting said Indianapolis Cabinet Company to overdraw its account with said association in said sum and by paying and causing said sum to be paid out of the moneys, funds and credits of said association; and by permitting and causing the same to be withdrawn from said association upon divers checks and drafts drawn upon said association by the said Indianapolis Cabinet Company; the said Indianapolis Cabinet Company not then and there being entitled to draw any part of said sum from said association, by reason of the fact of having no moneys, funds or credits in said association to its credit; that to conceal, cover up and hide said large overdrafts, from time to time the said Theodore P. Haughey received from said Indianapolis Cabinet Company, and gave the said company credit therefor on the books of said association, a large number of worthless and insolvent notes, drafts and bills of exchange, in a large amount, a more particular description of which is to the grand jurors unknown, executed by and drawn by and upon divers persons, firms, companies and corporations, a more particular description of which is to the grand jurors unknown, each and all of whom were then and there insolvent, as the said Theodore P. Haughey then and there well knew, whereby the greater part of said sum was lost to said association; all of which said acts aforesaid being then and there done and performed with intent then and there and thereby to deceive certain officers and directors of said association whose names are to the grand jurors unknown.

The said Theodore P. Haughey the president of said bank as aforesaid, then and there having the custody, control and management of the moneys, funds and credits of said association.

And the grand jurors aforesaid, do further say, that Albert S. Reed, Francis A. Coffin and Percival B. Coffin at the State and district of Indiana aforesaid, did then and there unlawfully, knowingly, wilfully and feloniously, and with intent to deceive certain officers and directors of said association whose names are to the grand jurors unknown, on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, president as aforesaid, to wrongfully, unlawfully, wilfully and feloniously misapply the moneys, funds and credits of said association, to wit, the sum of three hundred and fifty thousand dollars aforesaid, contrary to the form of the statute of the United States, in such case made and provided, and against the peace and dignity of the United States of America.

18 Twenty-sixth count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey then and there being president of a certain national banking association, then and there known and designated as the Indianapolis National Bank of the City of Indianapolis, in the State and district of Indiana, which said association had been theretofore organized and created under the laws of the United States of America, and which said association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, and without the authority of the board of directors of said bank, unlawfully, wilfully and feloniously misapply the moneys, funds and credits of said association, with intent to convert the same to the use of the Indianapolis Cabinet Company, a more particular description of said moneys, funds and credits being to the grand jurors unknown, in a large amount, to wit: three hundred and fifty thousand dollars; by then and there and between said dates permitting said Indianapolis Cabinet Company to overdraw its account with said association in said sum; and by paying and causing said sum to be paid out of the moneys, funds and credits of said association; and by permitting and causing the same to be withdrawn from said association upon divers checks and drafts drawn upon said association by the said Indianapolis Cabinet Company, the said Indianapolis Cabinet Company not then and there being entitled to draw any part of said sum from said association, by reason of the fact of having no moneys, funds or credits in said association to its credit; that to conceal, cover up and hide said large overdrafts, from time to time the said Theodore P. Haughey received from said Indianapolis Cabinet Company, and gave the said company credit therefor on the books of said association, a large number of worthless and insolvent notes, drafts and bills of exchange, in a large amount, a more particular description of which is to the grand jurors unknown, executed by and drawn by and upon divers persons, firms, companies and corporations, a more particular description of which is to the grand jurors unknown, each and all of whom were then and there insolvent, as the said Theodore P. Haughey then and there well knew, whereby the greater part of said sum was lost to said association; all of said acts aforesaid being then and there done and performed with intent then and there to injure and defraud said association and certain companies, bodies politic, bodies corporate, and individual persons whose names are to the grand jurors unknown.

That as such president aforesaid, the said Theodore P. Haughey was then and there entrusted and charged, by the board of directors of said association, with the custody, control and care of the moneys,

funds, credits and assets of said association, and the general superintendence of its affairs.

And the grand jurors aforesaid do further say that Albert S. Reed, Francis A. Coffin and Percival B. Coffin, at the State and district of Indiana aforesaid, did then and there unlawfully, knowingly, wilfully and feloniously, and with intent to injure and defraud said association and certain companies, bodies politic, bodies corporate and individual persons whose names are to the grand jurors unknown, to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, president as aforesaid, to wrongfully, unlawfully, wilfully and feloniously misapply the moneys, funds and credits of said association, to wit: the sum of three hundred and fifty thousand dollars aforesaid, contrary to the form of the statute of the United States, in such case made and provided, and against the peace and dignity of the United States of America.

Twenty-seventh count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being president of a certain national banking association, then and there known and designated as the Indianapolis National Bank of the City of Indianapolis, in the State and district of Indiana, which said association had been theretofore organized and created under the laws of the United States of America, and which said association was then and there carrying on a banking business in the said city of Indianapolis, State of Indiana aforesaid, did then and there,
19 by virtue of his said office as president of said bank, and without authority of the board of directors of said bank, unlawfully, knowingly, wilfully and feloniously misapply the moneys, funds and credits of said association, with intent then and there to convert the same to the use of the Indianapolis Cabinet Company, in a large amount to wit: three hundred and fifty thousand dollars, a more particular description of said moneys, funds and credits being to the grand jurors unknown, by then and there permitting said Indianapolis Cabinet Company to overdraw its account with said bank in said sum: and by paying and causing said sum to be paid out of the moneys, funds and credits of said association, and in permitting and causing the said sum to be withdrawn from said association upon divers checks and drafts drawn on said association by the said Indianapolis Cabinet Company; the said Indianapolis Cabinet Company then and there not being entitled to draw any part of said sum from said bank, and having

no moneys, funds or credits in said association to its credit, against which it was entitled to check during said time; that said Indianapolis Cabinet Company was, during all of said time, insolvent, as the said Theodore P. Haughey then and there well knew; that said Theodore P. Haughey then and there well knew that said Indianapolis Cabinet Company was not entitled to withdraw any part of said sum from said bank, and that said Indianapolis Cabinet Company had no moneys, funds or credits in said association during said time to its credit, and that said Indianapolis Cabinet Company was insolvent; that all of said acts aforesaid were done and performed with intent then and there to deceive certain officers and directors of said association whose names are to the grand jurors unknown; the said Theodore P. Haughey as such president aforesaid then and there having the custody, control and management of the moneys, funds and credits of said association.

And the grand jurors aforesaid, do further say that Albert S. Reed, Francis A. Coffin and Percival B. Coffin, at the State and district of Indiana aforesaid, did then and there unlawfully, knowingly, wilfully and feloniously, and with intent to deceive certain officers and directors of said association, whose names are to the grand jurors unknown, on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers other times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, president as aforesaid, to wrongfully, unlawfully, wilfully and feloniously misapply the moneys, funds and credits of said association, to wit: the sum of three hundred and fifty thousand dollars aforesaid, contrary to the form of the statute of the United States, in such case made and provided, and against the peace and dignity of the United States of America.

Twenty-eighth count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey late of said district at the district aforesaid, on, to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey then and there being president of a certain national banking association then and there known and designated as the Indianapolis National Bank of the City of Indianapolis, in the State and district of Indiana which said association had been theretofore organized and created under the laws of the United States of America, and which said association was then and there carrying on a banking business at the said city of Indianapolis, State of Indiana aforesaid, did then and there, by virtue of his said office as president of said bank, and without authority of the board of directors of said bank, unlawfully, willfuly, knowingly and feloniously misapply the moneys, funds and credits of said association, with intent then and there to convert the same to the

use of the Indianapolis Cabinet Company, in a large amount, to wit: three hundred and fifty thousand dollars, a more particular description of said moneys, funds and credits being to the grand jurors unknown; by then and there permitting said Indianapolis Cabinet Company to overdraw its accounts with said bank in said sum; and by paying and causing said sum to be paid out of the moneys, funds and credits of said association, and in permitting and causing the said sum to be withdrawn from said association upon divers checks and drafts drawn on said association by the said Indianapolis Cabinet Company; the said Indianapolis Cabinet Company then and there not being entitled to draw any part of said sum from said bank, and having no moneys, funds or credits in said association to its credit, against which it was entitled to check during said time; that said Indianapolis Cabinet Company was, during all of said time, insolvent as the said Theodore P. Haughey then and there well knew; that said Theodore P. Haughey then and there knew that said Indianapolis Cabinet Company was not entitled to withdraw any part of said sum from said bank, and that said Indianapolis Cabinet Company had no moneys, funds or credits in said association during said time, to its credit; and the said Indianapolis Cabinet Company was insolvent, whereby a large part of said sum became lost to said association; that all of said acts aforesaid, were done and performed with intent to injure and defraud said association and certain companies, bodies politic, bodies corporate and individual persons whose names are to the grand jurors unknown; that as such president aforesaid, the said Theodore P. Haughey was then and there entrusted and charged by the board of directors of said association, with the custody, control and care of the moneys, funds and credits of said association, and the general superintendence of its affairs.

And the grand jurors aforesaid, do further say, that Albert S. Reed, Francis A. Coffin and Percival B. Coffin, at the State and district of Indiana aforesaid, did then and there unlawfully, knowingly, willfully and feloniously, and with intent to injure and defraud said association and certain companies, bodies politic, bodies corporate and individual persons whose names are to the grand jurors unknown, on, to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, president as aforesaid, to wrongfully, unlawfully wilfully and feloniously misapply the moneys, funds and credits of said association, to wit: the sum of three hundred and fifty thousand dollars aforesaid, contrary to the form of the statute, of the United States, in such case made and provided, and against the peace and dignity of the United States of America.

Twenty-ninth count.

And the grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said

district at the district aforesaid, on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-sixth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey then and there being the president of a certain national banking association, then and there known and designated as the Indianapolis National Bank of the City of Indianapolis, in the State of Indiana aforesaid, which said association had been theretofore organized and created under the laws of the United States of America, and which said association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana as aforesaid, did then and there, by virtue of his said office as president of the said bank, and without authority of the board of directors of the said association, unlawfully, knowingly and feloniously misapply the moneys, funds and credits of said association, with intent then and there to convert the same to the use and benefit of the Indianapolis Cabinet Company, a more particular description of said moneys funds and credits being to the grand jurors unknown; in a large amount, to wit: the sum of three hundred and fifty thousand dollars, by then and there permitting said Indianapolis Cabinet Company to overdraw its account to the amount of said sum, and in loaning to said Indianapolis Cabinet Company said sum at one and the same time; that the said Indianapolis Cabinet Company did, on the twenty-fourth day of July, in the year of our Lord one thousand eight hundred and ninety-three, owe the said association for money loaned to said Indianapolis Cabinet Company, the said sum of three hundred and fifty thousand dollars; the said sum is largely in excess of ten per cent. of the capital stock of said association; the said capital stock of said association being, during all of said time, three hundred thousand dollars; with intent then and there and thereby to injure and defraud said association and certain companies, bodies politic, bodies corporate and individual persons whose names are to the grand jurors unknown; the said Theodore P. Haughey, as such president aforesaid, then and there having the custody, control and management of the moneys, funds and credits of said association.

And the grand jurors aforesaid, do further say that Albert S. Reed, Francis A. Coffin and Percival B. Coffin at the State and district aforesaid, did then and there unlawfully, wilfully, knowingly and feloniously, and with intent to injure and defraud said association and certain companies bodies politic, bodies corporate and individual persons whose names are to the grand jurors unknown, on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-sixth day of July, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, president as aforesaid, to wrongfully, unlawfully, wilfully and feloniously misapply the moneys, funds and credits of said association, to wit: the sum of three hundred and fifty thousand dollars aforesaid, contrary to the form of the statute

of the United States, in such case made and provided, and against the peace and dignity of the United States of America.

21 Thirtieth count.

And the grand jurors aforesaid, upon their oath aforesaid, do further charge and present, that Theodore P. Haughey late of said district, at the district aforesaid, on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey then and there being president of a certain national banking association then and there known and designated as the Indianapolis National Bank of the City of Indianapolis, in the State and district of Indiana, which said association had been theretofore organized and created under the laws of the United States of America, and which said association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his office as president of said bank, and without authority of the board of directors, unlawfully, feloniously and wilfully misapply the moneys, funds and credits of said association, with intent then and there to convert the same to the use of the Indianapolis Cabinet Company, in a large amount, to wit: three hundred and fifty thousand dollars, a more particular description of such moneys, funds and credits being to the grand jurors unknown, by then and there permitting the said Indianapolis Cabinet Company to overdraw its account with said bank in said sum; and by paying and causing said sum to be paid out of the moneys, funds and credits of said association, and in permitting and causing the said sum to be withdrawn from said association upon divers checks and drafts drawn on said association by the said Indianapolis Cabinet Company; the said Indianapolis Cabinet Company then and there not being entitled to draw any part of said sum from said bank, and having no moneys, funds or credits in said association to its credit, against which it was entitled to check during said time; the said Indianapolis Cabinet Company was, during all of said time, insolvent, as the said Theodore P. Haughey then and there well knew; that the said Theodore P. Haughey then and there well knew that the said Indianapolis Cabinet Company was not entitled to withdraw any part of said sum from said bank, and that the said Indianapolis Cabinet Company had no moneys, funds or credits in said association, during said time, to its credit, and that the said Indianapolis Cabinet Company was insolvent, that all of said acts aforesaid were done and performed with intent then and there to injure and defraud said association; the said Theodore P. Haughey as such president then and there having the custody, control and management of the moneys, funds and credits of said association.

And the grand jurors aforesaid do further say that Albert S. Reed, Francis A. Coffin and Percival B. Coffin at the State and district of Indiana, did then and there unlawfully, wilfully, knowingly and

feloniously: and with intent to injure and defraud said association, on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey to wrongfully, unlawfully, wilfully and feloniously misapply the moneys funds and credits of said association to wit: the sum of three hundred fifty thousand dollars aforesaid, contrary to the form of the statute of the United States, in such case made and provided, and against the peace and dignity of the United States of America.

Thirty-first count.

And the grand jurors aforesaid, upon their oath aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being president of a certain national banking association then and there known and designated as the Indianapolis National Bank of the City of Indianapolis, in the State and district of Indiana, which said association had been theretofore organized and created under the laws of the United States of America, and which said association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, and without authority of the board of directors, unlawfully, feloniously, wilfully and knowingly misapply the moneys, funds and credits of said association, with intent to convert the same to the use of the Indianapolis Cabinet Company, a more particular description of said moneys, funds and credits being to the grand jurors unknown, in a large amount, to wit: three hundred and fifty thousand dollars, by then and there, and between said dates, permitting and causing the same to be withdrawn from said association upon divers checks and drafts upon said association by the said Indianapolis Cabinet Company; the said Indianapolis Cabinet Company not then and there being
22 entitled to draw any part of said sum from said association, by reason of the fact of having no moneys, funds and credits in said association to its credit; that to conceal, cover up and hide said large overdrafts, from time to time the said Theodore P. Haughey received from the said Indianapolis Cabinet Company, and gave the said company credit therefor on the books of said association, a large number of worthless and insolvent notes, drafts and bills of exchange, in a large amount, a more particular description of which is to the grand jurors unknown, executed and drawn by and upon divers persons, firms, companies and corporations, a more particular description of which is to the grand jurors unknown, each and all of whom were then and there insolvent, as the said

Theodore P. Haughey then and there well knew, whereby the greater part of said sum was lost to said association; all of said acts aforesaid being then and there done and performed with intent then and there to injure and defraud said association; the said Theodore P. Haughey, as such president, then and there having the custody, control and management of the moneys, funds and credits of said association.

And the grand jurors aforesaid do further say that Albert S. Reed, Francis A. Coffin and Percival B. Coffin, at the State and district of Indiana as aforesaid, did then and there unlawfully, knowingly, willfully and feloniously, and with intent to injure and defraud said association, on, to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey as aforesaid, to wrongfully, unlawfully, willfully and feloniously misapply the moneys, funds and credits of said association, to wit: the sum of three hundred fifty thousand dollars aforesaid, contrary to the form of the statute of the United States, in such case made and provided, and against the peace and dignity of the United States of America.

Thirty-second count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on, to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one and on divers times between said date and the twenty-sixth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey then and there being president of a certain national banking association then and there known and designated as the Indianapolis National Bank of the city of Indianapolis, in the State of Indiana, which said association had been theretofore organized and created under the laws of the United States of America, and which said association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of the said bank, and without authority of the board of directors, unlawfully, knowingly, wilfully and feloniously misapply the moneys, funds and credits of said association, with intent to convert the same to the use and benefit of the Indianapolis Cabinet Company, a more particular description of said moneys, funds and credits being to the grand jurors unknown, in a large amount, to wit: three hundred fifty thousand dollars, by then and there permitting said Indianapolis Cabinet Company to overdraw its account to the amount of said sum, and in loaning to said Indianapolis Cabinet Company said sum at one and the same time; that the said Indianapolis Cabinet Company did, on the 24th day of July, 1893, owe the said association for money loaned, the said sum of three hundred and fifty thousand

dollars; that said sum is largely in excess of ten per cent. of the capital stock of said association; the said capital stock of said association being, during all of said time, three hundred thousand dollars; with intent then and there to injure and defraud said association; the said Theodore P. Haughey as such president then and there having the custody, control and management of the moneys, funds and credits of said association.

And the grand jurors aforesaid, do further say that Albert S. Reed, Francis A. Coffin and Percival B. Coffin at the State and district of Indiana, aforesaid, did then and there unlawfully, wilfully, knowingly and feloniously, and with intent to injure and defraud the said association, on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-sixth day of July, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey as aforesaid, to wrongfully, unlawfully, wilfully and feloniously misapply the moneys, funds and credits of said association, to wit: the sum of three hundred and fifty thousand dollars aforesaid, contrary to the form of the statute of the United States, in such case made and provided, and against the peace and dignity of the United States of America.

23 Thirty-third count.

And the grand jurors aforesaid, upon their oaths aforesaid do further charge and present; that, at said district, on the 1st day of January, A. D. 1891, and on divers days and times between that day and the 25th day of July, A. D. 1893, Theodore P. Haughey, being then and there the president of the Indianapolis National bank, in the city of Indianapolis, in the district and State of Indiana, and as such president, being then and there and during all of said time, entrusted and charged by the board of directors of said bank, with the care, custody and control of its moneys, funds, credits and assets, and the general superintendence of its affairs; did then and there and during said time, unlawfully, knowingly, feloniously and wilfully misapply and convert the moneys, funds, credits and assets of said bank, in the sum of three hundred and fifty thousand dollars, to the use and benefit of the Indianapolis Cabinet Company, by then and there and during all of said time, unlawfully, wilfully, knowingly and feloniously paying and causing said sum to be paid out of the moneys, funds and credits of said bank, to said Indianapolis Cabinet Company, on and for divers worthless checks, drafts and bills of exchange, tendered and presented and given to; and accepted by said bank, by said Indianapolis Cabinet Company, without the knowledge or consent of the board of directors of said bank; with the intent then and there and thereby to unlawfully, wilfully, knowingly and feloniously injure and defraud said bank, and divers other persons to the grand jurors unknown.

And the grand jurors aforesaid, upon their oath aforesaid, further present that said The Indianapolis National bank was then and

there and during all of said time, a national banking association organized and created under and by virtue of the laws of the United States, and was then and there and during all of said time, engaged in carrying on a banking business in the city of Indianapolis, in said State and district of Indiana.

And the grand jurors aforesaid, upon their oaths aforesaid do further present that Francis A. Coffin, Percival B. Coffin and Albert S. Reed, late of said district at the district aforesaid, did then and there, and during all of said time, unlawfully, wilfully, knowingly and feloniously and with intent then and there to injure and defraud said banking association, on, to wit: the 1st day of January, A. D. 1891, and on divers times and days between that day and the 25th day of July, A. D. 1893, aid and abet the said Theodore P. Haughey to unlawfully, knowingly, wilfully and feloniously misapply and convert the moneys, funds and credits and assets of said bank as aforesaid contrary to the form of the statute of the United States, in such case made and provided, and against the peace and dignity of the United States of America.

Thirty-fourth count.

And the grand jurors aforesaid, upon their oath aforesaid, do further charge and present, that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being president of a certain national banking association then and there known and designated as the Indianapolis National Bank of the City of Indianapolis, in the State and district of Indiana, which said association had been theretofore organized and created under the laws of the United States of America, and which said association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there by virtue of his office as president of said bank, and without authority of the board of directors unlawfully, feloniously and wilfully misapply the moneys, funds, and credits of said association, with intent to convert the same to the use of the Indianapolis Cabinet Company, a more particular description of said moneys, funds and credits being to the grand jurors unknown, in a large amount, to wit: three hundred and fifty thousand dollars, by then and there, and between said dates, permitting said Indianapolis Cabinet Company to overdraw its account with said association in said sum, and by paying and causing said sum to be paid out of the moneys, funds and credits of said association, and by permitting and causing the same to be overdrawn from said association upon divers checks and drafts drawn upon said association by the said Indianapolis Cabinet Company; the said Indianapolis Cabinet Company not then and there being entitled to draw any part of said sum from said association, by reason of the fact of having no moneys, funds or credits in

said association to its credit; that to conceal, cover up and hide said large overdrafts, from time to time, the said Theodore P. Haughey received from the said Indianapolis Cabinet Company, and gave the said company credit therefor on the books of said association, a large number of worthless and insolvent notes, drafts and bills of exchange, in a large amount, a more particular description of which is to the grand jurors unknown, executed by and drawn by and upon divers persons, firms, companies and corpora-
24 tions, a more particular description of which is to the grand jurors unknown, each and all of whom were then and there insolvent, as the said Theodore P. Haughey then and there well knew, whereby the greater part of said sum was lost to said association; all of which acts aforesaid being then and there done and performed with intent then and there and thereby to injure and defraud said association; the said Theodore P. Haughey as such president then and there having the custody, control and management of the moneys, funds and credits of said association.

And the grand jurors aforesaid, do further say that Francis A. Coffin, Percival B. Coffin and Albert S. Reed, at the State and district of Indiana aforesaid, did then and there unlawfully, wilfully, knowingly and feloniously, and with intent then and there to injure and defraud said association, on to wit: the first day of January in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey as such president aforesaid, to wrongfully, unlawfully, wilfully and feloniously misapply the moneys, funds and credits of said association, to wit: the sum of three hundred and fifty thousand dollars aforesaid, contrary to the form of the statute of the United States, in such case made and provided, and against the peace and dignity of the United States of America.

Thirty-fifth count.

And the grand jurors aforesaid, upon their oath aforesaid do further charge and present, that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being president of a certain national banking association then and there known and designated as the Indianapolis National Bank of the City of Indianapolis, in the State and district of Indiana, which said association had been theretofore organized and created under the laws of the United States of America, and which said association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, and without authority of the board of directors, unlawfully, feloniously and wilfully misapply the moneys, funds and

credits of said association, with intent to convert the same to the use of the Indianapolis Cabinet Company, a more particular description of said moneys, funds and credits being to the grand jurors unknown, in a large amount, to wit: three hundred and fifty thousand dollars, by then and there between said dates, permitting the said Indianapolis Cabinet Company to overdraw its account with said association in said sum, and by paying and causing said sum to be paid out of the moneys, funds and credits of said association, and by permitting and causing the same to be withdrawn from said association upon divers checks and drafts drawn upon said association by the said Indianapolis Cabinet Company; the said Indianapolis Cabinet Company not then and there being entitled to draw any part of said sum from said association, by reason of the fact of having no moneys, funds or credits in said association to its credit; that to conceal, cover up and hide said large overdrafts, from time to time the said Theodore P. Haughey received from the said Indianapolis Cabinet Company, and gave the said company credit therefor on the books of said association, a large number of worthless and insolvent notes, drafts and bills of exchange, in a large amount, a more particular description of which is to the grand jurors unknown, executed by and drawn by and upon divers persons, firms, companies and corporations, in a large amount to wit: notes of Francis A. Coffin in the sum of, to wit: $21,927.99; notes of Percival B. Coffin in a large sum to wit: $27,196.75; the notes of the Indianapolis Cabinet Company in a large sum to wit: $35,739.29; the notes of the Indianapolis Plow Company in a large sum to wit: $30,240.25; notes of the Indianapolis Veneer and Panel Company in the sum of to wit: $31,422.93; notes and drafts on the American Desk and Seating Company, of Chicago, in a large sum to wit: $7,708.16; drafts on the Indiana Cabinet Company, of Boston, in the sum of to wit: $50,209.25; drafts on the Indianapolis Desk Company, of London, England in the sum of to wit: $40,837.21; drafts on the Indianapolis Office Furniture Company of New York in the sum of, to wit: $47,862.65; drafts on the United States Office Furniture Company in the sum of to wit: $26,062.52, and drafts on the Wooten Office Desk Company of Richmond, Indiana, in the sum of to wit: $48,565.33; that each and all of said persons and corporations were then and there insolvent as the said Theodore P. Haughey then and there well knew, whereby the greater part of said sums became lost to said association; all of said acts aforesaid being then and there done and performed with intent then and there and thereby to injure and defraud said association; the said Theodore P. Haughey as said president then and there being entrusted by the board of directors with the custody, control and management of the moneys, funds and credits of said association and the general superintendence of its affairs.

25 And the grand jurors aforesaid, do further say that Francis A. Coffin, Percival B. Coffin and Albert S. Reed, at the State and district of Indiana aforesaid, did then and there unlawfully, wilfully, knowingly and feloniously, and with intent then and there to injure and defraud said association, on to wit: the first day of

January in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, as such president aforesaid, to wrongfully, unlawfully, wilfully and feloniously misapply the moneys, funds and credits of said association, to wit: the sum of three hundred and fifty thousand dollars aforesaid, contrary to the form of the statute of the United States, in such case made and provided and against the peace and dignity of the United States of America.

Thirty-sixth count.

And the grand jurors aforesaid, upon their oath aforesaid do further charge and present that Theodore P. Haughey late of said district, at the district aforesaid, on to wit the first day of January, in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey, then and there being president of a certain national banking association then and there known and designated as the Indianapolis National Bank of the City of Indianapolis, in the State and district of Indiana, which said organization had been theretofore organized and created under the laws of the United States of America, and which said association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there by virtue of his said office as president of said bank, but without authority of the board of directors, unlawfully, feloniously and wilfully misapply the moneys, funds and credits of said association, with intent to convert the same to the use of the Indianapolis Cabinet Company, a more particular description of said moneys, funds and credits being to the grand jurors unknown, in a large amount, to wit: three hundred and fifty thousand dollars by then and there and between said dates, permitting said Indianapolis Cabinet Company to overdraw its account with said association in said sum, and by paying and causing said sum to be paid out of the moneys, funds and credits of said association, and by permitting and causing the same to be withdrawn from said association upon divers checks and drafts drawn upon said association by the said Indianapolis Cabinet Company; the said Indianapolis Cabinet Company not then and there being entitled to draw any part of said sum from said association, by reason of the fact of having no moneys, funds or credits in said association to its credit; that to conceal, cover up and hide said large overdrafts, from time to time, the said Theodore P. Haughey received from the said Indianapolis Cabinet Company, and gave the said company credit therefor on the books of said association, a large number of worthless and insolvent notes, drafts and bills of exchange, in a large amount, a more particular description of which is to the grand jurors unknown, executed by and drawn by and upon divers persons, firms companies and corporations, in a large amount, to wit:

notes of Francis A. Coffin in the sum of, to wit: $21,927.99; notes of Percival B. Coffin in a large sum, to wit: $27,196.78; the notes of the Indianapolis Cabinet Company in a large sum, to wit: $35,739.29; the notes of the Indianapolis Plow Company in a large sum, to wit: $30,240.25; notes of the Indianapolis Veneer and Panel Company in the sum of to wit: $31,422.93; notes and drafts on the American Desk and Seating Company, of Chicago, in a large sum, to wit: $7,708.16; drafts on the Indiana Cabinet Company, of Boston, in the sum of to wit: $50,209.25; drafts on the Indianapolis Desk Company, of London, England, in the sum of to wit: $40,837.21; drafts on the Indianapolis Office Furniture Company of New York in the sum of to wit: $47,862.65; drafts on the United States Office Furniture Company in the sum of to wit: $26,062.52 and drafts on the Wooten Office Desk Company of Richmond, Indiana, in the sum of to wit: $48,565.33; that each and all of said persons and corporations were then and there insolvent as the said Theodore P. Haughey then and there well knew, whereby the greater part of said sum became lost to said association; all of said acts aforesaid being then and there done and performed with intent to deceive any agent appointed and any agent and agents who might thereafter be appointed and designated by the Comptroller of the Currency to examine the affairs of the said national banking association, the name and names of said agent and agents being to the grand jurors unknown. The said Theodore P. Haughey as said president then and there being entrusted by the board of directors with the custody, control and management of the moneys, funds and credits of said association and the general superintendence of its affairs.

And the grand jurors aforesaid, do further say that Francis A. Coffin, Percival B. Coffin and Albert S. Reed, at the State and district of Indiana aforesaid, did then and there unlawfully, wilfully, knowingly and feloniously and with intent then and there to deceive any agent appointed and any agent and agents thereafter appointed by the Comptroller of the Currency to examine
26 the affairs of said association; the name and names of said agent and agents being to the grand jurors unknown, on to wit: the first day of January in the year of our Lord one thousand eight hundred and ninety-one, and on divers times between said date and the twenty-fifth day of July, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey as such president aforesaid, to wrongfully, unlawfully, willfully and feloniously misapply the moneys, funds and credits of said association, to wit: the sum of three hundred and fifty thousand dollars aforesaid, contrary to the form of the statute of the United States, in such case made and provided, and against the peace and dignity of the United States of America.

Thirty-seventh count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey, late of said

district, at the district aforesaid on the thirtieth day of March, in the year of our Lord one thousand eight hundred and ninety-two, the said Theodore P. Haughey then and there being president of a certain banking association then and there known as the Indianapolis National Bank of the City of Indianapolis, in the State and district aforesaid, which said national banking association had been theretofore organized and created under and by virtue of the laws of the United States, and which said national banking association was then and there carrying on a banking business in the said city of Indianapolis, in the State and district of Indiana, did then and there, with intent to injure and defraud the aforesaid Indianapolis National bank, unlawfully, knowingly, willfully and feloniously make and cause to be made in a book kept by the said Indianapolis National bank and known as Individual Ledger L, A to M, at page 928 of said book, and under date of March thirtieth in the year 1892, and under the account of the Indianapolis Cabinet Company, and in the credit column on said page, a certain false entry: which said entry is in the words and figures following, to wit:

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which said entry aforesaid, purported to show, and in fact did in substance and effect indicate and declare that the Indianapolis Cabinet Company had, on said day deposited in the aforesaid national banking association, moneys, funds and credits in the sum of twenty thousand four hundred and eighty dollars and seventy-six cents and was entitled to credit therefor upon the books of the said Indianapolis National bank; that said entry aforesaid, as the said Theodore P. Haughey then and there well knew was false in this, to wit: That the said Indianapolis Cabinet Company had not, on said day deposited the aforesaid sum of twenty thousand four hundred and eighty dollars and seventy-six cents with the aforesaid national banking association, and was not entitled to credit on the aforesaid book of the said national banking association for the said sum of twenty thousand, four hundred and eighty dollars and seventy-six cents, but was entitled to credit on the said book for a sum much less than the aforesaid sum of twenty thousand four hundred and eighty dollars and seventy-six cents, aforesaid, to wit: the sum of seventeen thousand and twenty-seven dollars and five cents, more or less, less than the said sum of twenty thousand four hundred and eighty dollars and seventy-six cents, the exact amount being to the grand jurors unknown; that the aforesaid false entry so made as aforesaid by the said Theodore P. Haughey, was made with intent to injure and defraud said association.

And the grand jurors aforesaid, do further say that Albert S. Reed, Francis A. Coffin and Percival B. Coffin, at the State and district of Indiana aforesaid, did then and there unlawfully, willfully, knowingly and feloniously, and with intent to injure and defraud said association on to wit: the thirtieth day of March, in the year of our Lord, one thousand eight hundred and ninety-two, aid and abet the said Theodore P. Haughey as aforesaid in wrongfully, unlaw-

fully, willfully and feloniously making and causing to be made the said false entry aforesaid, contrary to the form of the statute of the United States, in such case made and provided, and against the peace and dignity of the United States of America.

Thirty-eighth count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on the thirtieth day of March, in the year of our Lord one thousand eight hundred and ninety-two, the said Theodore P. Haughey then and there being president of a certain banking association then and there known as the Indianapolis National Bank of the City of Indianapolis, in the State and district aforesaid, which said national banking association had been theretofore organized and created under and by virtue of the laws of the United States, and which said national banking
27 association was then and there carrying on a banking business in the said city of Indianapolis, in the State and district of Indiana, did then and there, with intent to injure and defraud the aforesaid Indianapolis National bank, unlawfully, knowingly, willfully and feloniously make and cause to be made in a book kept by the said Indianapolis National bank and known as Individual Ledger L, A to M, at page 928 of said book, and under date of March thirtieth in the year 1892, and under the account of the Indianapolis Cabinet Company, and in the credit column on said page, a certain false entry; which said entry is in the words and figures following, to wit:

20 480 76

which said entry aforesaid, purported to show, and in fact did in substance and effect indicate and declare that the Indianapolis Cabinet Company had, on said day deposited in the aforesaid national banking association, moneys, funds and credits in the sum of twenty thousand four hundred and eighty dollars and seventy-six cents and was entitled to credit therefor upon the books of the said Indianapolis National bank; that said entry aforesoid, as the said Theodore P. Haughey then and there well knew was false in this, to wit: That the said Indianapolis Cabinet Company had not, on said day deposited the aforesaid sum of twenty thousand four hundred and eighty dollars and seventy-six cents with the aforesaid national banking association, and was not entitled to credit on the aforesaid book of the said national banking association for the said sum of twenty thousand, four hundred and eighty dollars and seventy-six cents, but was entitled to credit on the said book for a sum much less than the aforesaid sum of twenty thousand four hundred and eighty dollars and seventy-six cents aforesaid, to wit: the sum of seventeen thousand and twenty-seven dollars and five cents, more or less, less than the said sum of twenty thousand four hundred and eighty dollars and seventy-six cents, the exact amount being to the grand jurors unknown; that the aforesaid false entry so

which said entry aforesaid, purported to show, and in fact did in substance and effect indicate and declare that the Indianapolis Cabinet Company, had, on said day, deposited in said bank, moneys funds and credits in the sum of forty-four thousand dollars, and was entitled to credit therefor upon the books of said bank; the said entry aforesaid, as the said Theodore P. Haughey then and there well knew, was false in this, to wit: that said Indianapolis Cabinet Company had not on said day deposited said sum of forty-four thousand dollars, nor any part thereof with said association, for which the Indianapolis Cabinet Company was entitled to credit on the books of said bank; that said false entry made as aforesaid, by the said Theodore P. Haughey, was made with intent then and there to injure and defraud said association.

And the grand jurors aforesaid, do further say, that Albert S. Reed, Francis A. Coffin and Percival P. Coffin, at the State and district of Indiana aforesaid, did then and there unlawfully, knowingly, wilfully and feloniously, and with intent to injure and defraud said association, on to wit: the ninth day of May, in the year of our Lord, one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey, as such president aforesaid, in wrongfully, unlawfully, wilfully and feloniously making said false entry aforesaid, contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Forty-first count.

And the grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the sixth day of January, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey then and there being president of a certain national banking association, then and there known and designated as the Indianapolis National Bank of the City of Indianapolis, and State of Indiana, which said national banking association
29 had been theretofore created and organized under and by virtue of the laws of the United States of America, and which said national banking association was then and there carrying on a banking business in the said city of Indianapolis and State of Indiana aforesaid, did then and there, with intent to injure and defraud said national banking association, unlawfully, knowingly, willfully and feloniously make and cause to be made in a book kept by said banking association, and known as Individual Ledger L, A to M, at page 930 of said book, and under the date of January 6th, in the year 1893, and under the account of the Indianapolis Cabinet Company, and in the credit column on said page, a certain false entry; which said entry is in the words and figures following, to wit:

23069 04

which said entry aforesaid, purported to show and in fact did in substance and effect indicate and declare that the Indianapolis Cabinet Company had, on said day deposited in said bank, moneys, funds and credits in the sum of twenty-three thousand and sixty-nine dollars and four cents, and was entitled to credit therefor upon the books of said bank; that said entry aforesaid, as the said Theodore P. Haughey then and there well knew, was false in this, to wit: that said Indianapolis Cabinet Company had not on said day deposited said sum of twenty-three thousand and sixty-nine dollars and four cents, nor any part thereof, with said association, for which the Indianapolis Cabinet Company was entitled to credit on the books of said bank; that said false entry made as aforesaid by the said Theodore P. Haughey, was made with intent to injure and defraud the said association.

And the grand jurors aforesaid, do further say that Albert S. Reed, Francis A. Coffin and Percival B. Coffin, did then and there unlawfully, knowingly, willfully and feloniously, and with intent then and there to injure and defraud said association, on to wit: the sixth day of January, in the year of our Lord one thousand, eight hundred and ninety-three, aid and abet the said Theodore P. Haughey as aforesaid in wrongfully, unlawfully, willfully and feloniously, making and causing to be made the said false entry aforesaid, contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Forty-second count.

And the grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the sixth day of January, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey then and there being president of a certain national banking association, then and there known and designated as the Indianapolis National Bank of the City of Indianapolis, and State of Indiana, which said national banking association had been theretofore created and organized under and by virtue of the laws of the United States of America, and which said national banking association was then and there carrying on a banking business in the city of Indianapolis and State of Indiana aforesaid, did then and there, with intent to injure and defraud said national banking association, unlawfully, knowingly, willfully and feloniously make and cause to be made in a book kept by said banking association, and known as Individual Ledger L, A to M, at page 930 of said book, and under the date of January 6th, in the year 1893, and under the account of the Indianapolis Cabinet Company, and in the credit column on said page, a certain false entry; which said entry is in the words and figures following, to wit:

which said entry aforesaid, purported, to show and in fact did in substance and effect indicate and declare that the Indianapolis Cabinet Company had, on said day deposited in said bank, moneys, funds and credits in the sum of twenty-three thousand and sixty-nine dollars and four cents, and was entitled to credit therefor upon the books of said bank; that said entry aforesaid, as the said Theodore P. Haughey then and there well knew, was false in this, to wit: that said Indianapolis Cabinet Company had not on said day deposited said sum of twenty-three thousand and sixty-nine dollars and four cents, nor any part thereof, with said association, for which the Indianapolis Cabinet Company was entitled to credit on the books of said bank; that said false entry made as aforesaid by the said Theodore P. Haughey, was made with intent to deceive any agent appointed and any agent and agents who might thereafter be appointed and designated by the Comptroller of the Currency to examine the affairs of the said The Indianapolis National bank, the name and names of said agent and agents being to the grand jurors unknown.

30 And the grand jurors aforesaid, do further say that Albert S. Reed, Francis A. Coffin and Percival B. Coffin, at the district and State of Indiana aforesaid, did then and there unlawfully, knowingly, willfully and feloniously, and with intent to deceive any agent appointed and any agent and agents who might thereafter be appointed and designated by the Comptroller of the Currency to examine the affairs of the said The Indianapolis National bank, the name and names of said agent and agents being to the grand jurors unknown, on to wit: the sixth day of January, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey as aforesaid, in wrongfully, willfully, knowingly and feloniously making and causing to be made, said false entry aforesaid, contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Forty-third count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present, that Theodore P. Haughey, late of said district, at the district aforesaid, on, to wit: the fifth day of January, in the year of our Lord one thousand eight hundred and ninety-three, the said Theodore P. Haughey then and there being president of a certain national banking association, then and there known and designated as the Indianapolis National Bank of the City of Indianapolis, in the State and district of Indiana, which said national banking association had been theretofore created and organized under and by virtue of the laws of the United States of America, and which said national banking association was then and there carrying on a banking business in the said city of Indianapolis, in the State of Indiana aforesaid, did then and there, with intent to injure and de-

fraud the said national banking association, unlawfully, knowingly, willfully and feloniously, make and cause to be made in a book kept by said banking association and known as Individual Ledger L, A to M, at page 930 of said book, and under the date of January 5th, 1893, and under the account of the Indianapolis Cabinet Company, and in the credit column on said page, a certain false entry, which said entry is in the words and figures following, to wit:

2723 10

which said entry aforesaid purported to show and in fact did in substance and effect indicate and declare that the Indianapolis Cabinet Company had, on said day deposited in said bank, moneys, funds and credits in the sum of two thousand seven hundred and twenty-three dollars and ten cents, and was entitled to credit therefor upon the books of said bank; that said entry aforesaid as the said Theodore P. Haughey then and there well knew was false in this, to wit: that the said Indianapolis Cabinet Company had not on said day deposited said sum of two thousand seven hundred and twenty-three dollars and ten cents, nor any part thereof, with said association, for which the said Indianapolis Cabinet Company was entitled to credit on the books of said bank; that said false entry made as aforesaid, by the said Theodore P. Haughey, was made with intent to injure and defraud the said national banking association aforesaid.

And the grand jurors aforesaid do further say, that Albert S. Reed, Francis A. Coffin and Percival B. Coffin, at the State and district of Indiana aforesaid, did then and there unlawfully, knowingly, willfully and feloniously and with intent to injure and defraud said association, on to wit: the fifth day of January, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey as aforesaid in wrongfully, unlawfully, and feloniously making and causing to be made said false entry aforesaid, contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Forty-fourth count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present, that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the fifth day of January, in the year of our Lord one thousand, eight hundred and ninety-three, the said Theodore P. Haughey then and there being president of a certain national banking association, then and there known and designated as the Indianapolis National Bank of the City of Indianapolis, in the State and district of Indiana, which said national banking association had been theretofore created and organized under and by virtue of the laws of the United States of America, and which said national banking association was then and there carrying on a banking business in the said city of Indianapolis,

in the State of Indiana aforesaid, did then and there, with intent to injure and defraud the said national banking association, unlawfully, knowingly, willfully and feloniously, make and cause to be made in a book kept by said banking association and
31 known as Individual Ledger L, A to M, at page 930 of said book, and under the date of January 5th, 1893, and under the account of the Indianapolis Cabinet Company, and in the credit column on said page, a certain false entry, which said entry is in the words and figures following, to wit:

2723 10

which said entry aforesaid purported to show and in fact did in substance and effect indicate and declare that the Indianapolis Cabinet Company had, on said day deposited in said bank, moneys, funds and credits in the sum of two thousand seven hundred and twenty-three dollars and ten cents, and was entitled to credit therefor upon the books of said bank; that said entry aforesaid as the said Theodore P. Haughey then and there well knew was false in this, to wit: that the said Indianapolis Cabinet Company had not on said day deposited said sum of two thousand seven hundred and twenty-three dollars and ten cents, nor any part thereof, with said association, for which the said Indianapolis Cabinet Company was entitled to credit on the books of said bank; that said false entry made as aforesaid, by the said Theodore P. Haughey, was made with intent to deceive any agent appointed and any agent and agents who might thereafter be appointed and designated by the Comptroller of the Currency to examine the affairs of the said The Indianapolis National bank, the name and names of said agent and agents being to the grand jurors unknown.

And the grand jurors aforesaid do further say, that Francis A. Coffin, Percival B. Coffin and Albert S. Reed at the State and district of Indiana aforesaid, did unlawfully, knowingly, willfully and feloniously, and with intent to deceive any agent appointed, and any agent and agents thereafter appointed and designated by the Comptroller of the Currency to examine the affairs of the said The Indianapolis National bank, the name and names of said agent and agents being to the grand jurors unknown, on to wit: the fifth day of January in the year of our Lord one thousand eight hundred and ninety-three aid and abet the said Theodore P. Haughey as aforesaid, in wrongfully, unlawfully, willfully and feloniously making and causing to be made said false entry aforesaid, contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Forty-fifth count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the seventeenth day of September, in the year of our Lord one thousand eight hundred and

ninety-two, the said Theodore P. Haughey then and there being president of a certain national banking association, then and there known and designated as the Indianapolis National Bank of the City of Indianapolis, in the State and district of Indiana, which said national banking association had been theretofore created and organized under and by virtue of the laws of the United States of America, and which said national banking association was then and there carrying on a banking business in the said city of Indianapolis and State of Indiana aforesaid, did then and there, with intent to injure and defraud the said national banking association aforesaid, wrongfully, unlawfully, knowingly, willfully and feloniously make and cause to be made in a book kept by said banking association, and known as Individual Ledger L, A to M, at page 929 of said book, and under date of September seventeenth in the year 1892, and under the account of the Indianapolis Cabinet Company, and in the credit column on said page, a certain false entry, which said false entry is in the words and figures following, to wit:

13273 09

which said entry aforesaid purported to show and in fact did in substance and effect indicate and declare that the Indianapolis Cabinet Company had, on said day aforesaid, deposited in said bank, moneys, funds and credits in the sum of thirteen thousand two hundred and seventy-three dollars and nine cents, and was entitled to credit therefor upon the books of the said national bank aforesaid; that said entry aforesaid, as the said Theodore P. Haughey then and there well knew, was false in this, to wit: that said Indianapolis Cabinet Company had not, on said day aforesaid, deposited said sum of thirteen thousand two hundred and seventy-three dollars and nine cents with the said national banking association, and was not entitled to credit on the said book of the said national banking association for the sum of thirteen thousand two hundred and seventy-three dollars and nine cents aforesaid, but was entitled to credit for a much less sum than the said sum of thirteen thousand two hundred and seventy-three dollars and nine cents, to wit: the sum of nine thousand dollars, more or less, less than the aforesaid
32 sum of thirteen thousand two hundred and seventy-three dollars and nine cents, the exact sum less being to the grand jurors unknown; that the said false entry so made as aforesaid, by the said Theodore P. Haughey, aforesaid, was made with intent to injure and defraud said association.

And the grand jurors aforesaid, do further say that Albert S. Reed, Francis A. Coffin and Percival B. Coffin, at the district and State of Indiana aforesaid, did then and there unlawfully, knowingly, willfully and feloniously, and with intent to injure and defraud said association, on to wit: the seventeenth day of September, in the year of our Lord one thousand eight hundred and ninety-two, aid and abet the said Theodore P. Haughey as aforesaid, in wrongfully, unlawfully, willfully and feloniously making and causing to be made said false entry aforesaid, contrary to the form of the statute of the

United States in such case made and provided, and against the peace and dignity of the United States of America.

Forty-sixth count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the seventeenth day of September, in the year of our Lord one thousand eight hundred and ninety-two, the said Theodore P. Haughey then and there being president of a certain national banking association, then and there known and designated as the Indianapolis National Bank of the City of Indianapolis, in the State and district of Indiana, which said national banking association had been theretofore created and organized under and by virtue of the laws of the United States of America, and which said national banking association was then and there carrying on a banking business in the said city of Indianapolis and State of Indiana aforesaid, did then and there, with intent to injure and defraud the said national banking association aforesaid, wrongfully, unlawfully, knowingly, willfully and feloniously make and cause to be made in a book kept by said banking association, and known as Individual Ledger L, A to M, at page 929 of said book, and under date of September seventeenth in the year 1892, and under the account of the Indianapolis Cabinet Company, and in the credit column on said page, a certain false entry, which said false entry is in the words and figures following, to wit:

13273 09

which said entry aforesaid purported to show and in fact did in substance and effect indicate and declare that the Indianapolis Cabinet Company had, on said day aforesaid, deposited in said bank, moneys, funds and credits in the sum of thirteen thousand two hundred and seventy-three dollars and nine cents, and was entitled to credit therefor upon the books of the said national bank aforesaid; that said entry aforesaid, as the said Theodore P. Haughey then and there well knew, was false in this, to wit: that said Indianapolis Cabinet Company had not, on said day aforesaid, deposited said sum of thirteen thousand two hundred and seventy-three dollars and nine cents with the said national banking association, and was not entitled to credit on the said book of the national banking association for the sum of thirteen thousand two hundred and seventy-three dollars and nine cents aforesaid, but was entitled to credit for a much less sum than the said sum of thirteen thousand two hundred and seventy-three dollars and nine cents, to wit: the sum of nine thousand dollars, more or less, less than the aforesaid sum of thirteen thousand two hundred and seventy-three dollars and nine cents, the exact sum less being to the grand jurors unknown; that the said false entry so made as aforesaid, by the said Theodore P. Haughey, was made with intent then and there and thereby to deceive any agent appointed and any agent and agents who might thereafter be appointed and designated by the Comptroller of the

Currency to examine the affairs of the said The Indianapolis National bank, the name and names of said agent and agents being to the grand jurors unknown.

And the grand jurors aforesaid do further say that Albert S. Reed, Francis A. Coffin and Percival B. Coffin, at the State and district of Indiana aforesaid, did then and there unlawfully, willfully, knowingly and feloniously, and with intent to deceive any agent appointed and any agent and agents who might thereafter be appointed and designated by the Comptroller of the Currency to examine the affairs of the said The Indianapolis National bank, the name and names of said agent and agents being to the grand jurors unknown, on to wit: the seventeenth day of September, in the year of our Lord one thousand eight hundred and ninety-two, aid and abet the said Theodore P. Haughey, as aforesaid, in wrongfully, unlawfully, willfully and feloniously, making and causing to be made said false entry aforesaid, contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

33 Forty-seventh count.

The grand jurors aforesaid, upon their oaths aforesaid do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on to wit: the twenty-first day of December, in the year of our Lord one thousand, eight hundred and ninety-two, the said Theodore P. Haughey then and there being president of a certain national banking association, then and there known and designated as the Indianapolis National bank, in the city of Indianapolis, in the State of Indiana, which said association had been heretofore created and organized under the laws of the United States of America, and which said association was then and there carrying on a banking business in the city of Indianapolis, State of Indiana, did then and there, by virtue of his said office as president of said bank, unlawfully, feloniously and willfully misapply the moneys, funds and credits of the said association, which were then and there under his control, with intent to convert the same to the use of the Indianapolis Cabinet Company, and to other persons, to the grand jurors unknown, in a large sum, to wit: the sum of six thousand, three hundred and eighteen dollars, by then and there causing said sum to be paid out of the moneys, funds and credits of said association, upon a check drawn upon said association by the Indianapolis Cabinet Company, which check was then and there cashed and paid out of the moneys, funds and credits of said association aforesaid, which said sum aforesaid, and no part thereof, was said Indianapolis Cabinet Company entitled to withdraw from said bank, because said company had no funds in said association to its credit. That said Indianapolis Cabinet Company was then and there insolvent as the said Theodore P. Haughey then and there well knew, whereby said sum became lost to said association; that all of said acts as aforesaid were done with intent to injure and defraud said association. That as such president aforesaid, the said Theodore P. Haughey was entrusted and charged by the board of directors of said national bank-

ing association with the custody, control and care of the moneys, funds, credits and assets of said association, and the general superintendence of its affairs.

And the grand jurors aforesaid do further say that Francis A. Coffin, Percival B. Coffin and Albert S. Reed, did unlawfully, willfully, knowingly and feloniously and with intent to injure and defraud said association, on to wit: the twenty-first day of December, in the year of our Lord, one thousand eight hundred and ninety-two, aid and abet the said Theodore P. Haughey as aforesaid to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association as aforesaid, to wit: the sum of six thousand, three hundred and eighteen dollars.

Contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Forty-eighth count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on the fifteenth day of July, in the year of our Lord, one thousand eight hundred and ninety-three, the said Theodore P. Haughey then and there being president of a certain national banking association, then and there known and designated as the Indianapolis National Bank of the City of Indianapolis, in the State and district of Indiana aforesaid, which said association aforesaid had been heretofore created and organized under and by virtue of the laws of the United States of America, and which said association was then and there carrying on a banking business in the said city of Indianapolis, in the State and district of Indiana aforesaid, did then and there unlawfully, knowingly, feloniously and willfully make and cause to be made certain false entries in a report and statement of the condition of said banking association aforesaid, and which said report and statement aforesaid, it then and there became the duty of the Indianapolis National bank aforesaid, at the request and requisition of the Comptroller of the Currency, which said request and requisition aforesaid was made in due form of law, to make to him, the said Comptroller of the Currency, a report and statement of the form prescribed by the said Comptroller of the Currency, verified by the oath or affirmation of the president or cashier of the said The Indianapolis National bank, and attested by the signature of at least three of the directors thereof, said report and statement aforesaid, to exhibit in detail, and under appropriate heads, the resources and liabilities and condition of the said The Indianapolis National bank aforesaid at the close of the business thereof, on the twelfth day of July, 1893, and in pursuance of the request and requisition aforesaid, made as aforesaid by the Comptroller of the Currency, he the said Theodore P. Haughey, president as aforesaid, did then and there make and cause to be made, said report and statement aforesaid, to the Comptroller of the Currency, for the said national banking association aforesaid, in the form prescribed as aforesaid, the same being one of the five

reports required by law to be made yearly to the Comptroller of the Currency, and the same purporting to be a statement and declaration in detail and under proper heads, of the resources, liabil-
34 ities and condition of the said banking association aforesaid, at the close of business on the said twelfth day of July, 1893; which said report, statement and declaration was verified by Edwin E. Rexford, the cashier of said association and attested by three of the directors thereof, to wit: Theo. P. Haughey, Chas. F. Meyer and Robert B. F. Peirce, which said report and statement is of the following tenor, table and effect, to wit:

The said false entries made as aforesaid in said report and statement aforesaid, are in the words and figures following, to wit:

a. Under the head of "resources."

	Dollars. Cts.
4. Overdrafts unsecured (see schedule)....	2,802 68

b. On the schedule and under the head of "loans and discounts."

Bad debts as defined in section 5204 Rev. Stat..... $ None.

c. Under the head of "loans exceeding the limit prescribed by section 5200 of the Revised Statutes, including amounts which exceed this limit due from State and private banks and bankers.

Name of borrower.	Enter full amount of loan.
None.	

Said entries so made as aforesaid, in said report and statement, then and there purported to show and did in substance and effect indicate and declare:

1. That there was due on the said twelfth day of July, in the year 1893, to the said association by its customers on account of overdrafts, the sum of two thousand eight hundred and two dollars and sixty-eight cents.

2. That on said twelfth day of July, in the year 1893, there were no debts due to said association on which the interest had been past due six months at said date, unless the same were well secured and in process of collection.

3. That on said twelfth day of July, in the year 1893, there were no outstanding loans due said banking association from any association, person, company, corporation or firm including the liability of the several members of any firm or company exceeding ten per cent. of the capital stock of said association; that is to say, exceeding thirty thousand dollars.

Said entries so made as aforesaid, as the said Theodore P. Haughey then and there well knew, were then and there false in this, to wit:

1. That on said twelfth day of July, in the year 1893, there was due said association by its customers, on account of overdrafts, an

amount much larger than the aforesaid sum of two thousand eight hundred and two dollars and sixty-eight cents, to wit: the sum of sixty thousand six hundred and seventeen dollars and six cents, more or less, larger than the said sum of two thousand eight hundred and two dollars and sixty-eight cents; the exact amount being to the grand jurors unknown.

2. That on said twelfth day of July, in the year 1893, there were due said association, on which the interest had been past due more than six months at said date, and which said debts were not well secured and were not in process of collection in a large amount, to wit: the sum of fifty thousand dollars.

3. That on said twelfth day of July, in the year 1893, there was due said association, on loans from divers persons, associations, companies, corporations and firms, and from each of them, sums much larger than ten per cent. of the capital stock of the said association aforesaid, to wit: the sum of thirty thousand dollars aforesaid; the Indianapolis Cabinet Company was liable to said association on said day for money borrowed in a large amount, to wit: the sum of three hundred thousand dollars; the Indianapolis Glue Company was liable to said association on said day aforesaid, for money borrowed in a large amount, to wit: the sum of two hundred thousand dollars; the Indianapolis Curled Hair Company was liable to said association on said day, for money borrowed by said company in a large amount, to wit: the sum of two hundred and fifty thousand dollars; the National Electric Headlight Company on said day aforesaid, was liable to said association in a large sum, to wit: the sum of thirty-three thousand dollars. That each of divers persons were liable on said day to said association for money borrowed in a sum in excess of the said sum of thirty thousand dollars, the names of which persons, and the exact amounts owed by them and each of them, being to the grand jurors unknown.

The said Theodore P. Haughey, president as aforesaid, then and there and thereby intending by the aforesaid false entries to injure and defraud said association and divers persons whose names are to the grand jurors unknown.

And the grand jurors aforesaid further say that Albert S. Reed, Francis A. Coffin and Percival B. Coffin, at the State and district
35 of Indiana aforesaid, did then and there unlawfully, knowingly, willfully and feloniously, and with intent then and there to injure and defraud said association, and divers other persons whose names are to the grand jurors unknown, on to wit: the fifteenth day of July, in the year of our Lord one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey as aforesaid, wrongfully, knowingly, willfully and feloniously, to make said false entries in said report and statement aforesaid, contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Forty-ninth count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on the fifteenth day of July, in the year of our Lord, one thousand eight hundred and ninety-three, the said Theodore P. Haughey then and there being president of a certain national banking association, then and there known and designated as the Indianapolis National Bank of the City of Indianapolis, in the State and district of Indiana, aforesaid, which said association aforesaid had been heretofore created and organized under and by virtue of the laws of the United States of America, and which said association was then and there carrying on a banking business in the said city of Indianapolis, in the State and district of Indiana aforesaid, did then and there unlawfully, knowingly, feloniously and willfully make and cause to be made certain false entries in a report and statement of the condition of said banking association aforesaid, and which said report and statement aforesaid, it then and there became the duty of the Indianapolis National bank aforesaid, at the request and requisition of the Comptroller of the Currency, which said request and requisition aforesaid was made in due form of law, to make to him, the said Comptroller of the Currency, a report and statement of the form prescribed by the said Comptroller of the Currency, verified by the oath or affirmation of the president or cashier of the said The Indianapolis National bank, and attested by the signature of at least three of the directors thereof, said report and statement aforesaid, to exhibit in detail, and under appropriate heads, the resources and liabilities and condition of the said The Indianapolis National bank aforesaid at the close of the business thereof, on the twelfth day of July, 1893, and in pursuance of the request and requisition aforesaid, made as aforesaid by the Comptroller of the Currency, he the said Theodore P. Haughey, president as aforesaid, did then and there make and cause to be made, said report and statement aforesaid, to the Comptroller of the Currency, for the said national banking association aforesaid, in the form prescribed as aforesaid, the same being one of the five reports required by law to be made yearly to the Comptroller of the Currency, and the same purporting to be a statement and declaration in detail and under proper heads, of the resources, liabilities and condition of the said banking association aforesaid, at the close of business on the said twelfth day of July, 1893; which said report, statement and declaration was verified by Edwin E. Rexford, the cashier of said association and attested by three of the directors thereof, to wit: Theo. P. Haughey, Chas. F. Meyer and Robert B. F. Peirce, which said report and statement is of the following tenor, table and effect, to wit:

The said false entries made as aforesaid in said report and statement aforesaid, are in the words and figures following, to wit:

a. Under the head of "resources."

	Dollars. Cts.
4. Overdrafts unsecured (see schedule).....	2,802 68

b. On the schedule and under the head of "loans and discounts."

Bad debts as defined in section 5204 Rev. Stat..... $ None.

c. Under the head of "loans exceeding the limit prescribed by section 5200 of the Revised Statutes, including amounts which exceed this limit due from State and private banks and bankers.

Name of borrower.	Enter full amount of loan.
None.	

Said entries so made as aforesaid, in said report and statement, then and there purported to show and did in substance and effect indicate and declare:

1. That there was due on the said twelfth day of July, in the year 1893, to the said association by its customers on account of overdrafts, the sum of two thousand eight hundred and two dollars and sixty-eight cents.

2. That on said twelfth day of July, in the year 1893, there were no debts due to said association on which the interest had been past due six months at said date, unless the same were well secured and in process of collection.

36 3. That on said twelfth day of July, in the year 1893, there were no outstanding loans due said banking association from any association, person, company, corporation or firm including the liability of the several members of any firm or company exceeding ten per cent. of the capital stock of said association; that is to say, exceeding thirty thousand dollars.

Said entries so made as aforesaid, as the said Theodore P. Haughey then and there well knew, were then and there false in this, to wit:

1. That on said twelfth day of July, in the year 1893, there was due said association by its customers, on account of overdrafts, an amount much larger than the aforesaid sum of two thousand eight hundred and two dollars and sixty-eight cents, to wit: the sum of sixty thousand six hundred and seventeen dollars and six cents, more or less, larger than the said sum of two thousand eight hundred and two dollars and sixty-eight cents; the exact amount being to the grand jurors unknown.

2. That on said twelfth day of July, in the year 1893, there was due said association, on which the interest had been past due more than six months at said date, and which said debts were not well secured and were not in process of collection in a large amount, to wit: the sum of fifty thousand dollars.

3. That on said twelfth day of July, in the year 1893, there was due said association on loans from divers persons, associations, companies, corporations and firms, and from each of them, sums much

larger than ten per cent. of the capital stock of the said association aforesaid, to wit: the sum of thirty thousand dollars aforesaid; the Indianapolis Cabinet Company was liable to said association on said day for money borrowed in a large amount, to wit: the sum of three hundred thousand dollars; the Indianapolis Glue Company was liable to said association on said day aforesaid, for money borrowed in a large amount, to wit: the sum of two hundred thousand dollars; the Indianapolis Curled Hair Company was liable to said association on said day, for money borrowed by said company in a large amount, to wit: the sum of two hundred and fifty thousand dollars; the National Electric Headlight Company on said day aforesaid, was liable to said association in a large sum, to wit: the sum of thirty-three thousand dollars. That each of divers persons were liable on said day to said association for money borrowed in a sum in excess of the said sum of thirty thousand dollars, the names of which persons, and the exact amounts owed by them and each of them, being to the grand jurors unknown.

The said Theodore P. Haughey, president as aforesaid, then and there and thereby intending by the aforesaid false entries to deceive certain officers and directors of said association, whose names are to the grand jurors unknown.

And the grand jurors aforesaid further say that Francis A. Coffin, Percival B. Coffin and Albert S. Reed, at the State and district of Indiana aforesaid, did then and there unlawfully, knowingly, willfully and feloniously, and with intent to deceive certain officers and directors of said association, the names of said officers and directors being to the grand jurors unknown, on to wit: the fifteenth day of July, in the year of our Lord, one thousand eight hundred and ninety-three, aid and abet the said Theodore P. Haughey as aforesaid wrongfully, unlawfully, willfully and feloniously to make said false entries in said report and statement aforesaid, contrary to the form of the statute of the United States in such case made and provided, and against the peace and dignity of the United States of America.

Fiftieth count.

And the grand jurors aforesaid, upon their oaths aforesaid, do further charge and present that Theodore P. Haughey, late of said district, at the district aforesaid, on the fifteenth day of July, in the year of our Lord, one thousand eight hundred and ninety-three, the said Theodore P. Haughey then and there being president of a certain national banking association, then and there known and designated as the Indianapolis National Bank of the City of Indianapolis, in the State and district of Indiana, aforesaid, which said association aforesaid had been heretofore created and organized under and by virtue of the laws of the United States of America, and which said association was then and there carrying on a banking business in the said city of Indianapolis, in the State and district of Indiana aforesaid, did then and there unlawfully, knowingly, feloniously and willfully make and cause to be made certain false entries in a report and statement of the condition of said banking

association aforesaid, and which said report and statement aforesaid, it then and there became the duty of the Indianapolis National bank aforesaid, at the request and requisition of the Comptroller of the Currency, which said request and requisition aforesaid was made in due form of law, to make to him, the said Comptroller of the Currency, a report and statement of the form prescribed by the said Comptroller of the Currency, verified by the oath or affirmation of the president or cashier of the said The Indianapolis National bank, and attested by the signature of at least three of the directors thereof, said report and statement aforesaid, to
37 exhibit in detail, and under appropriate heads, the resources and liabilities and condition of the said The Indianapolis National bank aforesaid at the close of the business thereof, on the twelfth day of July, 1893, and in pursuance of the request and requisition aforesaid, made as aforesaid by the Comptroller of the Currency, he the said Theodore P. Haughey, president as aforesaid, did then and there make and cause to be made, said report and statement aforesaid, to the Comptroller of the Currency, for the said national banking association aforesaid, in the form prescribed as aforesaid the same being one of the five reports required by law to be made yearly to the Comptroller of the Currency, and the same purporting to be a statement and declaration in detail and under proper heads, of the resources, liabilities and condition of the said banking association aforesaid, at the close of business on the said twelfth day of July, 1893; which said report, statement and declaration was verified by Edwin E. Rexford, the cashier of said association and attested by three of the directors thereof, to wit: Theo. P. Haughey, Chas. F. Meyer and Robert B. F. Peirce, which said report and statement is of the following tenor, table and effect, to wit:

The said false entries made as aforesaid in said report and statement aforesaid, are in the words and figures following, to wit:

a. Under the head of "resources."

	Dollars. Cts.
4. Overdrafts unsecured (see schedule).....	2,802 68

b. On the schedule and under the head of "loans and discounts."

Bad debts as defined in section 5204 Rev. Stat.....	$ None.

c. Under the head of "loans exceeding the limit prescribed by section 5200 of the Revised Statutes, including amounts which exceed this limit due from State and private banks and bankers.

Name of borrower.	Enter full amount of loan.
None.	

Said entries so made as aforesaid, in said report and statement, then and there purported to show and did in substance and effect indicate and declare:

1. That there was due on the said twelfth day of July, in the year

1893, to the said association by its customers on account of overdrafts, the sum of two thousand eight hundred and two dollars and sixty-eight cents.

2. That on said twelfth day of July, in the year 1893, there were no debts due to said association on which the interest had been past due six months at said date, unless the same were well secured and in process of collection.

3. That on said twelfth day of July, in the year 1893, there were no outstanding loans due said banking association from any association, person, company, corporation or firm, including the liability of the several members of any firm or company exceeding ten per cent. of the capital stock of said association; that is to say, exceeding thirty thousand dollars.

Said entries so made as aforesaid, as the said Theodore P. Haughey then and there well knew, were then and there false in this, to wit:

1. That on said twelfth day of July, in the year 1893, there was due said association by its customers, on account of overdrafts, an amount much larger than the aforesaid sum of two thousand eight hundred and two dollars and sixty-eight cents, to wit: the sum of sixty thousand six hundred and seventeen dollars and six cents, more or less, larger than the said sum of two thousand eight hundred and two dollars and sixty-eight cents; the exact amount being to the grand jurors unknown.

2. That on said twelfth day of July, in the year 1893, there was due said association, on which the interest had been past due more than six months at said date, and which said debts were not well secured and were not in process of collection in a large amount, to wit: the sum of fifty thousand dollars.

3. That on said twelfth day of July, in the year 1893, there was due said association, on loans from divers persons, associations, companies, corporations and firms, and from each of them, sums much larger than ten per cent. of the capital stock of the said association aforesaid, to wit: the sum of thirty thousand dollars aforesaid; the Indianapolis Cabinet Company was liable to said association on said day for money borrowed in a large amount to wit: the sum of three hundred thousand dollars; the Indianapolis Glue Company was liable to said association on said day aforesaid, for money borrowed in a large amount, to wit: the sum of two hundred thousand dollars; the Indianapolis Curled Hair Company was liable to said association on said day, for money borrowed by said company in a large amount, to wit: the sum of two hundred and fifty thousand dollars; the National Electric Headlight Company on said
38 day aforesaid, was liable to said association in a large sum, to wit: the sum of thirty-three thousand dollars. That each of divers persons were liable on said day to said association for money borrowed in a sum in excess of the said sum of thirty thousand dollars, the names of which persons, and the exact amounts owed by them and each of them, being to the grand jurors unknown.

The said Theodore P. Haughey, president as aforesaid, then and there and thereby intending by the aforesaid false entries to deceive

any agent appointed, and any agent and agents who might thereafter be appointed and designated by the Comptroller of the Currency to examine the affairs of the said association, the name and names of said agent and agents being to the grand jurors unknown.

And the grand jurors aforesaid further say that Albert S. Reed, Francis A. Coffin and Percival B. Coffin, at the State and district of Indiana aforesaid, did then and there unlawfully, knowingly, willfully and feloniously, and with intent to deceive any agent appointed, and any agent and agents who might thereafter be appointed and designated by the Comptroller of the Currency to examine the affairs of the said The Indianapolis National bank, the name and names of said agent and agents being to the grand jurors unknown, aid and abet the said Theodore P. Haughey as aforesaid, wrongfully, unlawfully, willfully and feloniously to make the said false entries in said report and statement as aforesaid, contrary to the form of the statute of the United States, in such case made and provided and against the peace and dignity of the United States of America.

FRANK B. BURKE,
United States Attorney.

39 And afterwards, to wit, at the November term of said court, on the 12th day of January, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now William A. Van Buren, Esq., United States commissioner, and files the recognizance bonds of the defendants in the above-entitled cause taken before him.

And afterwards, to wit, at the November term of said court, on the 13th day of January, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

40 Comes now Frank B. Burke, Esq., attorney for the United States, and the defendant Percival B. Coffin, in person and by A. C. Harris, Esq., his attorney, also comes, and thereupon said defendant, being arraigned upon each and every count of said indictment, for plea thereto, says he is not guilty.

And now on motion of the attorney for the United States the defendant Francis A. Coffin and John Roberts, William E. Kurtz and Daniel W. Marmon, his sureties, in open court, acknowledge themselves to owe and be indebted unto the United States in the penal sum of five thousand dollars, to be levied of their and each of their goods and chattels, lands and tenements, if default be made in condition following—that is to say, that said defendant, Percival B. Coffin, be and appear in this court on this day and from day to day and term to term thereafter to answer unto the United States upon said indictment and abide the action of the court therein and not depart without its leave.

And at the same time on said 13th day of January, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

41 Comes now Frank B. Burke, Esq., attorney for the United States, and the defendant Percival B. Coffin, in person and by Claypool & Claypool, his attorney-, also comes, and thereupon, said defendant, being arraigned upon each and every count of said indictment, for plea thereto, says he is not guilty.

And now, on motion of the attorney for the United States, the defendant Percival B. Coffin and John Roberts and Joseph R. Perry, his sureties, in open court, acknowledge themselves to owe and be indebted unto the United States in the penal sum of five thousand dollars, to be levied of their and each of their goods and chattels, lands and tenements, if default be made in condition following—that is to say, that said defendant, Percival B. Coffin, be and appear in this court on this day and from day to day and term to term thereafter to answer unto the United States upon said indictment and abide the action of the court therein and not depart without its leave.

And at the same time, on said 13th day of January, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

42 Comes now Frank B. Burke, Esq., attorney for the United States, and the defendant Albert S. Reed, in person and by A. C. Harris, Esq., his attorney, also comes, and thereupon said defendant, being arraigned upon each and every count of said indictment, for plea thereto, says he is not guilty.

And now, on motion of the attorney for the United States, the defendant Albert S. Reed and Joseph Evans, Henry C. Wright, Robert W. Furnas, and M. D. Butler, his sureties, in open court, acknowledge themselves to owe and be indebted unto the United States in the penal sum of five thousand dollars, to be levied of their and each of their goods and chattels, lands and tenements, if default be made in condition following—that is to say, that said defendant, Albert S. Reed, be and appear in this court on this day and from day to day and term to term thereafter to answer unto the United States upon said indictment and abide the action of the court therein and not depart without its leave.

And afterwards, to wit, at the November term of said court, on the 10th day of April, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now Frank B. Burke, Esq., United States attorney, and John W. Kern, Esq., special assistant United States attorney, and the defendants Francis A. Coffin and Albert S. Reed, in person and by A. C. Harris and Miller, Winter & Elam, their attorneys, and the defendant Percival B. Coffin, in person and by Claypool & Claypool, his attorneys, also come; and this cause now coming on to

43 be tried, here comes a jury, to wit, John Murphy, Martin L. Harris, Azariah Baker, Alvin Armstrong, Charles Nagle,

Isaac Todd, Conrad Liphart, Jacob Sheffer, John A. Parks, George Tinley, Alfred Lininger, and John T. Duncan, who are duly impanneled and sworn; and thereupon the attorneys for the defendants move the court for a separate trial for each of the defendants; which motion is by the court overruled; to which ruling of the court the defendants, by their attorneys, all and severally except; and thereupon the jury, having heard the opening statement of counsel and partially heard the evidence herein, are, by the court, allowed to separate until the calling of this cause on tomorrow morning.

44 And afterwards, to wit, at the November term of said court, on the 11th day of April, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now Frank B. Burke, Esq., United States attorney, and John W. Kern, Esq., special assistant United States attorney, and at the same time come also the defendants Francis A. Coffin and Albert S. Reed, in person and by A. C. Harris and Miller, Winter & Elam, their attorneys, and the defendant Percival B. Coffin, in person and by Claypool & Claypool, his attorneys, and also comes the jury heretofore impanneled and sworn herein, who, having further heard the evidence herein, are now, by the court, allowed to separate until the calling of this cause on tomorrow morning.

45 And afterwards, to wit, at the November term of said court, on the 12th day of April, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now Frank B. Burke, Esq., United States attorney, and John W. Kern, Esq., special assistant United States attorney, and at the same time come also the defendants Francis A. Coffin and Albert S. Reed, in person and by A. C. Harris and Miller, Winter & Elam, their attorneys, and the defendant Percival B. Coffin, in person and by Claypool & Claypool, his attorneys, and also comes the jury heretofore impanneled and sworn herein, who, having further heard the evidence herein, are now, by the court, allowed to separate until the calling of this cause on tomorrow morning.

46 And afterwards, to wit, at the November term of said court, on the 13th day of April, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now Frank B. Burke, Esq., United States attorney, and John W. Kern, Esq., special assistant United States attorney, and at the same time come also the defendants Francis A. Coffin and Albert S. Reed, in person and by A. C. Harris and Miller, Winter & Elam, their attorneys, and the defendant Percival B. Coffin, in person and by Claypool & Claypool, his attorneys, and also comes the jury heretofore impanneled and sworn herein, who, having further heard the evidence herein, are now, by the court, allowed to separate until the calling of this cause tomorrow morning.

47 And afterwards, to wit, at the November term of said court, on the 14th day of April, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Frank B. Burke, United States attorney, any John W. Kern, Esq., special assistant United States attorney, and at the same time also come the defendants Francis A. Coffin and Albert S. Reed, in person and by A. C. Harris and Miller, Winter & Elam, their attorneys, and the defendant Percival B. Coffin, in person and by Claypool & Claypool, his attorneys, and also comes the jury heretofore impanneled and sworn herein, who, having further heard the evidence herein, are now, by the court, allowed to separate until the calling of this cause on next Monday morning.

48 And afterwards, to wit, at the November term of said court, on the 16th day of April, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now Frank B. Burke, Esq., United States attorney, and John W. Kern, Esq., special assistant United States attorney, and at the same time also come the defendants Francis A. Coffin and Albert S. Reed, in person and by A. C. Harris and Miller, Winter & Elam, their attorneys, and the defendant Percival B. Coffin, in person and by Claypool & Claypool, his attorneys, and also comes the jury heretofore impanneled and sworn herein, who, having further heard the evidence herein, are now, by the court, allowed to separate until the calling of this court on tomorrow morning.

49 And afterwards, to wit, at the November term of said court, on the 17th day of April, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now Frank B. Burke, Esq., United States attorney, and John W. Kern, Esq., special assistant United States attorney, and at the same time also come the defendants Francis A. Coffin and Albert S. Reed, in person and by A. C. Harris and Miller, Winter & Elam, their attorneys, and the defendant Percival B. Coffin, in person and by Claypool & Claypool, his attorneys, and also comes the jury heretofore impanneled and sworn herein, who, having further heard the evidence herein, are now, by the court, allowed to separate until the calling of this cause on tomorrow morning.

50 And afterwards, to wit, at the November term of said court, on the 18th day of April, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Frank B. Burke, Esq., United States attorney, and John W. Kern, Esq., special assistant United States attorney, and at the same time also come the defendants Francis A. Coffin and Albert S. Reed, in person and by A. C. Harris and Miller, Winter & Elam, their attorneys, and the defendant Percival B. Coffin, in person and by Claypool & Claypool, his attorneys, and also comes the

jury heretofore impanneled and sworn herein, who, having further heard the evidence herein, are now, by the court, allowed to separate until the calling of this cause on next Tuesday afternoon at 2 o'clock.

51 And afterwards, to wit, at the November term of said court, on the 24th day of April, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now Frank B. Burke, Esq., United States attorney, and John W. Kern, Esq., special assistant United States attorney, and at the same time also come the defendants Francis A. Coffin and Albert S. Reed, in person and by A. C. Harris and Miller, Winter & Elam, their attorneys, and the defendant Percival B. Coffin, in person and by Claypool & Claypool, his attorneys, and also comes the jury heretofore impanneled and sworn herein, who, having further heard the evidence herein, are now, by the court, allowed to separate until the calling of this cause on tomorrow morning.

And afterwards, to wit, at the November term of said court, on the 25th day of April, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the parties, The United States, by Frank B. Burke, United States attorney, and John W. Kern, special assistant to the attorney of the United States, and the defendants each in person and by his counsel, and comes also the jury impanneled and sworn to try this cause, and now it being shown to the satisfaction of the court that one of said jurors has entered into negotiations with a view to rendering a corrupt verdict in this cause, and said negotiations having so far progressed as to clearly show the guilt of said juror; thereupon it is ordered by the court, with the consent
52 of the Government and of each of said defendants, present in open court, and of the counsel of said defendants, that said jury be, and the same is hereby, discharged from a further consideration of this cause, said discharge of said jury to be without prejudice to the right of the Government to impannel another jury and again put said defendants upon trial.

And afterwards, to wit, at the November term, 1893, of said court, on the 27th day of April, 1894, before the Honorable John H. Baker, judge as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney of the United States, and the defendants, by Miller, Winter & Elam, Linton A. Cox, and L. M. Harvey, their attorneys, also come and move the court for postponement of the trial herein, and in support of said motion file the affidavit of the defendant Francis A. Coffin in the words following, to wit:

STATE OF INDIANA, }
Marion County, } ss:

Francis A. Coffin, being duly sworn, upon his oath says that he is one of the defendants in the above-entitled cause; that Addison C. Harris has been the chief counsel for himself and his codefendants in said cause from the time the indictment was returned until now; that affiant and his codefendants relied upon said Harris to determine the line and character of their defense in said cause, which he did; that other counsel were subsequently employed to assist in the trial, to perform certain specific services, but not
53 to take control of the case; that said Harris has a fuller knowledge of the facts involved in the case than any other counsel has or can have; that said Harris has a personal knowledge of very many transactions which affiant is informed and believes and therefore avers will be involved in the trial; that said Harris was attorney for the defendants in their business affairs throughout the whole period of time which affiant is informed and believes the investigation in said trial will cover; that many transactions which affiant is informed and believes will be involved in the trial were done and performed by defendants upon the advice and counsel of said Harris; that said Harris has more fully investigated the law bearing upon the case than any other counsel; that one of the subjects of investigation in said trial is the resources and property and solvency and the nature and extent and character of the business of the Indianapolis Cabinet Company, a corporation; that said Harris during all the period which the investigation in the trial will cover was the sole attorney of the said cabinet company, and therefore has personal knowledge of said matters which, owing to the extent of the business of said company, is superior in the defense to any knowledge which other counsel can in a limited time acquire; that said Harris has prepared and arranged for the preparation of the evidence to be introduced for the defense; that no other counsel have any knowledge of the evidence except a small portion thereof; that for these reasons said Harris has such a grasp of the case, both of the law and the evidence, that it is necessary for the defense that he be present at the trial, and particularly to make the closing argument in the case.

That on, to wit, the 17th day of April, 1894, said Harris was
54 accidentally very seriously wounded in the left arm by a pistol shot; that because of said injury he has from thence until now been unable to take any part in any way, by preparation or otherwise, in this case, and has been unable to give other counsel the benefit of his personal knowledge and information and preparation of the case; that he was able for the first time to leave his bed for a short time on yesterday, the 26th day of April, 1894. Affiant is informed and believes, and therefore states, that his recovery will from this time be rapid; that he will be in the course of two or three weeks able to render some service by advice in the case and be so far recovered as to take charge of the defense in this case.

Affiant further states that on April 10th, 1894, he and his co-

defendants in this cause were put upon trial, and that evidence was introduced every day from thence until noon of the 17th day of April following by the Government, at which time, on account of the injury to said Harris herein stated, an adjournment was taken until 2 o'clock of the 24th day of April, 1894; that afterward further evidence was introduced by the Government until, on the morning of April 25, 1894, the jury was discharged for misconduct of a juror.

Affiant says that the indictment in the above-entitled cause contains fifty counts, covering more than 118 typewritten pages; that it was impossible for the defense or their counsel to anticipate from the contents of said counts or any of them, on account of their indefinite, general, and uncertain statements, that the Government would introduce or seek to introduce a large part of the evidence which was offered and admitted between said dates, April 10 and April 17; that between said dates last mentioned the Government introduced in evidence a great deal of evidence, consisting of
55 entries from the books of the Indianapolis National bank, checks, notes, bills, drafts, letters and other documents, and the testimony of witnesses involving substantially the entire business transactions of the Indianapolis Cabinet Company with said bank and various other companies with said Indianapolis Cabinet Company from January 1st, 1891, to July 25th, 1893, which transactions were very numerous and of large amount, and also the Government introduced evidence as to remittances of money by said Indianapolis Cabinet Company through the First National Bank of Chicago to London, England, said remittances covering the time from January 1, 1891, amounting to over one hundred and ninety thousand dollars and consisting of over two hundred separate transactions, for the purpose of showing that the defendants or some of them obtained money from the Indianapolis National bank and lodged it at some place in London for the use and benefit of themselves or some of them; that said charge was and is wholly unfounded, as shown by the books of the Indianapolis National bank, but the fact is, as shown by said books, that, at the time the various sums so attempted to be shown to have been taken to London were taken, at substantially the same dates much larger sums were paid by the defendant in London to the Indianapolis National bank or their agent; that while this is shown by the books of the Indianapolis National bank to be the fact, yet, owing to the method in which entries are made on the books of said bank, it was very difficult to discover in the books of said bank the fact that said money was paid as aforesaid in London to said bank or their agent.

That immediately on the adjournment, on April 17th, 1894, the defendants and their counsel and clerks began investigating said books with a view to showing the real transactions, of which
56 the Government had sought to prove only a part; that owing to the method of book-keeping aforesaid it was necessary for the defendant and their counsel and clerks to go through the transactions of the bank on the many books of the bank, page by page, covering the period from October, 1890, to July, 1893, when the bank closed, without any help from any index, and that this re-

search involved the examination of entries on pages numbering many thousands; that said examination occupied defendants and their counsel and clerks the whole week of the adjournment, from April 17 to April 24, and their counsel have had no opportunity to familiarize themselves to any extent with any other part of the case or phase of the evidence introduced; that to fully corroborate the books of the Indianapolis National bank and show the true nature of the transactions aforesaid the defendants and their counsel have had and are having investigations made of the books of the banks in New York and London who are correspondents and agents of the said Indianapolis National bank during said period and through whom the money received by it from London was paid; that said examination is incomplete, notwithstanding the defendants have used their utmost exertions, and to complete said examinations will require several weeks from this time; that from the effort so made by the Government, in the instance referred to, to show that the defendants or some of them have fraudulently secreted and converted to their own personal use the money so remitted by said Indianapolis Cabinet Company the defendants are advised by their counsel that they should be prepared to show the expenditures of all moneys drawn from said bank by the Indianapolis Cabinet Company or either of them during the entire period covered by the dealings with said bank mentioned in the indictment; that all the books and papers of the Indianapolis National bank are in the possession of the Government, and these defendants have only had access to them by the permission of the persons in charge of them for the Government and in their presence; that all the books and papers of the Indianapolis Cabinet Company passed out of the possession of these defendants, who are the officers of said company, on the 7th day of August, 1893, when a receiver was appointed for said company by the circuit court of Marion county, Indiana, and have remained in the possession of said receiver from thence continuously until the adjournment of this court, from April 17th to April 24th, when the Government caused a large part of said books and papers, substantially all of those relating to the transactions with said Indianapolis National bank, to be delivered into the possession of the agents and officers of the Government conducting this prosecution under a *subpœna duces tecum*, and these defendants since then have only had access to such books and papers in the presence of the agents of the Government or by giving receipts by their counsel for such papers as were delivered into their possession, by reason of all which it has been more difficult than it otherwise would have been for the defendants and their counsel to prepare their evidence to meet the case which the Government is endeavoring to establish against them, and since the interruption of the trial by the misconduct of the juror aforesaid the officers of the Government have refused to permit defendants or their counsel to have possession of any of the papers of said Indianapolis Cabinet Company even upon giving the receipt of their counsel therefor, although the defendants have asked for temporary possession of

57

58 certain of said papers which are necessary for the preparation of their defense and offered to have them receipted for by their counsel; that the above-entitled cause is one of four cases commonly known as the bank cases, growing out of the failure of the Indianapolis National bank in July, 1893; that the other three of the bank cases are the cases of The United States *vs.* Schuyler C. Haughey, United States *vs.* Edwin E. Rexford, United States *vs.* Robert B. F. Peirce.

That all said cases, including the above-entitled case, were, on the — day of January, 1894, set for trial on April 10, 1894; that said cases of Haughey, Rexford, and Pierce are still upon the calendar of this court.

That in this case defendants are charged with aiding and abetting an officer of a national bank in committing an offense against the laws of the United States.

That in the case of Pierce and Rexford the defendants are charged as officers of said bank; that the said Haughey is charged with aiding and abetting an officer of said bank in the violation of laws of the United States.

That when said cases were set for trial on the — day of January, 1894, for April 10, 1894, as aforesaid, they were set for trial in the following order:

1. The case of Schuyler C. Haughey.
2. The above-entitled case.
3. The case of said Rexford.
4. The case of said Peirce.

And at said time the district attorney in said district announced to the court, in the presence of the defendants and their counsel, that the cases would be tried in the order in which they were set for trial after the trial of another case, to wit, the case of The United States *vs.* Theodore P. Haughey; that on April 10, without

59 any notice to the defendants or either of them, the case of said Schuyler C. Haughey was postponed to this cause without the consent of these defendants or either of them.

Affiant is informed and believes and therefore states that there is no reason why the next case upon the calendar, to wit, the case of said Schuyler C. Haughey, should not be taken up and tried and this cause postponed until said Harris is so far recovered as to take charge of the defense of the affiant and his codefendants, and that postponement of the trial is necessary in order to enable the defendants to procure and prepare their evidence as hereinbefore stated.

FRANCIS A. COFFIN.

Subscribed and sworn to before me this 27th day of April, 1894.

[SEAL.] JOHN W. CLAYPOOL,
Notary Public.

And said defendant, Albert S. Reed, now moves the court for a separate trial herein, and in support of said motion and of the motion for postponement now files his affidavit herein in the words following, to wit:

60 Defendant Albert S. Reed respectfully petitions this honorable court for a separate trial of the charges herein made against him and for a continuance of this cause, and in support of said petition, being duly sworn, on oath says—

That he had no connection with the Indianapolis Cabinet Company nor with any person, firm, or corporation with which said cabinet company was associated in business prior to July 1st, 1890, and that he was only nominally officer of said cabinet company from and after August 15th, 1892; that many transactions of said company, as to which evidence will probably be offered by the prosecution herein, took place prior to this defendant's employment by said cabinet company and prior to his association with either of the other defendants herein, and that transactions have since occurred as to which this defendant at the time had no knowledge and in which he did not participate.

That the relation of this defendant to the matters charged in the indictment herein differs materially from the relation thereto of either of the other defendants; that he at no time had any actual money interest in the property or assets of said cabinet company or in the proceeds of its business.

That Addison C. Harris, a member of this bar, had, from the time of indictment of this defendant until April 17th, 1894, been the sole and only attorney with whom this defendant had consulted as to the matters involved in the separate defense of this defendant and the only counsel who had made preparation toward presenting the separate interests of this defendant; that no other attorney engaged
61 in the defense of any other defendant in this cause has given attention or consideration to the separate and individual interests of this defendant; that affiant's said attorney had made preparation for presenting and conducting affiant's said defense, and, believing that his said attorney would be able to so do, affiant relied and depended thereon.

That on the 17th day of April, 1894, defendant's said attorney accidentally sustained serious bodily injuries which have since continuously confined him to his house and prevented his participation in the defense of this cause, which injuries affiant is informed and believes will prevent his said attorney from attending this court at the time his cause is now set for trial; that immediately upon learning said facts this defendant on, to wit, the 23rd day of April, 1894, employed other counsel to represent his individual interests herein, but affiant says that because of the great number of charges against said affiant and the general and indefinite character of such charges and the great volume of transactions and accounts involved in the trial thereof much time and great labor is required to acquaint his said attorney with the facts in relation thereto, and that, though due diligence has been used, affiant is not prepared and believes he cannot be prepared for trial of this cause by the day on which said trial is to be called.

More particularly in reference to his relation to said Indianapolis Cabinet Company and the matters charged in the indictment herein affiant says that he was in fact an employé only of the Indianapolis

Cabinet Company, and that he had no interest in the prop-
62 erty or business of said company, but held one share of its capital stock for the purpose only of acting as its treasurer, and that he never participated in any dividend or in the profits of said company.

That his duties and acts for said company were of a clerical and subordinate character; that he had no voice in the management, conduct, or control of the business of said company, and that his said duties were performed and done at all times under the general direction and frequent specific direction of the president of said company and subject to his approval or disapproval.

That affiant at all times fully believed that said company was solvent and had ample assets wherewith to pay its debts, and that the larger part of the debt of said cabinet company to said Indianapolis National bank was actually and fully secured by mortgage on the property of said cabinet company, and affiant believed that there existed no danger to the Indianapolis National bank of loss on account of any debt of said cabinet company to said bank.

That affiant had no knowledge as to the insolvency of said bank or of any facts which would cause the same to become insolvent, and that all the doings of affiant were in good faith and without guilty knowledge or intent.

Affiant says that because of the facts herein set out he cannot have at such time a full and fair trial of the charges against him, and that great injustice may result to affiant if he is required to enter upon the trial of said cause on Tuesday, May 1st, 1894; that if the trial of his said cause be postponed for five weeks he believes he can be fully prepared for such trial.

63 That affiant has not by act or connivance contributed to the existence of the facts herein set out which prevent his being ready for such trial.

ALBERT S. REED.

L. M. HARVEY,
Att'y for Def't Reed.

STATE OF INDIANA, } *ss:*
Marion County, }

Before me, a notary public in and for Marion county, Indiana, Albert S. Reed, above named, subscribed and swore to the foregoing affidavit.

Witness my hand and seal this 27th day of April, 1894.

ROBERT L. KEITH,
[SEAL.] *Notary Public.*

And the court, having heard argument and being sufficiently advised, doth now overrule each and all of said motions; to which ruling of the court said defendants severally except; and defendants are granted sixty days from this date to file bills of exceptions.

64 And afterwards, to wit, at the May term of said court, on the 1st day of May, 1894, before Honorable John H. Baker

judge of said court, the following further proceedings in the above entitled cause were had, to wit:

Come now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and come also the defendants in person, the defendants Francis A. Coffin and Percival B. Coffin, by Miller, Winter & Elam, and Duncan & Smith, their attorneys, and the defendant Albert S. Reed, by Lawson M. Harvey, his attorney, and the defendants Percival B. Coffin and Albert S. Reed, by Claypool & Claypool, their attorneys, and this cause now coming on to be tried here comes a jury, to wit, Thomas H. Collier, John Davidson, Noah Garrett, Francis M. Gelvin, James Good, Reuben Hipsely, Noah N. Sims, Hilary Spalding, Peter Stoner, George W. Barnett, John O. Young, and Joseph A. Trotter, who, being duly impaneled and sworn, are now, by the court, allowed to separate until the calling of this cause on tomorrow morning.

And afterwards, to wit, at the May term of said court, on the 2nd day of May, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, in person and by their respective attorneys, also come, and the jury heretofore impanneled and sworn also come, and, having heard the statement of counsel and partially heard the evidence herein, are by the court allowed to separate until the calling of this cause on tomorrow morning.

65 And afterwards, to wit, at the May term of said court, on the 3rd day of May, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, in person and by their respective attorneys, also come, and the jury heretofore impanneled and sworn herein also come, and, having further heard the evidence herein, are by the court allowed to separate until the calling of this cause on tomorrow morning.

And afterwards, to wit, at the May term of said court, on the 4th day of May, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, in person and by their respective attorneys, also come, and the jury heretofore impanneled and sworn herein, also come, and, having further heard the evidence herein, are by the court allowed to separate until the calling of this cause on tomorrow morning.

66 And afterwards, to wit, at the May term of said court, on the 5th day of May, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, in person and by their respective attorneys, also come, and the jury heretofore impanneled and sworn herein also come, and, having further heard the evidence herein, are by the court allowed to separate until the calling of this cause on next Monday morning.

And afterwards, to wit, at the May term of said court, on the 7th day of May, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, in person and by their respective attorneys, also come, and the jury heretofore impanneled and sworn herein also come, and, having further heard the evidence herein, are by the court allowed to separate until the calling of this cause on tomoorow morning.

67 And afterwards, to wit, at the May term of said court, on the 8th day of May, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, in person and by their respective attorneys, also come, and the jury heretofore impanneled and sworn herein also come, and, having further heard the evidence herein, are by the court allowed to separate until the calling of this same cause on tomorrow morning.

And afterwards, to wit, at the May term of said court, on the 9th day of May, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, in person and by their respective attorneys, also come, and the jury heretofore impanneled and sworn herein, also come, and, having further heard the evidence herein, are by the court allowed to separate until the calling of this cause on tomorrow morning.

68 And afterwards, to wit, at the May term of said court, on the 10th day of May, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, in person and by their respective attorneys, also come, and the jury heretofore impanneled and sworn herein also come, and, having further heard the evidence herein, are by the court allowed to separate until the calling of this cause on tomorrow morning.

And afterwards, to wit, at the May term of said court, on the 11th day of May, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, in person and by their respective attorneys, also come, and the jury heretofore impanneled and sworn herein also come, and, having further heard the evidence herein, are by the court allowed to separate until the calling of this cause on tomorrow morning.

69 And afterwards, to wit, at the May term of said court, on the 12th day of May, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, in person and by their respective attorneys, also come, and the jury heretofore impanneled and sworn herein also come, and, having further heard evidence herein, are by the court allowed to separate until the calling of this cause on next Monday morning.

And afterwards, to wit, at the May term of said court, on the 14th day of May, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, in person and by their respective attorneys, also come, and the jury heretofore impanneled and sworn herein also come, and, having further heard the evidence herein, are by the court allowed to separate until the calling of this cause on tomorrow morning.

70 And afterwards, to wit, at the May term of said court, on the 15th day of May, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, in person and by their respective attorneys, also come, and said defendants now file their motion to

require the Government to elect and specify the particular transaction in certain counts of the indictment herein upon which it relies, &c.; which motion is in the words and figures following, to wit:

The defendants, and each of them, severally move the court to require the Government to elect and specify the particular transaction in each count of the general counts in the indictment in this case, to wit, the 17th, the 18th, the 19th, the 20th, the 21st, the 22d, the 23d, the 24th, the 25th, the 26th, the 27th, the 28th, the 29th, the 30th, the 31st, the 32d, the 33d, the 34th, the 35th, and the 36th counts, upon which it relies as a substantive charge and upon which it will claim a conviction of the defendants, or either of them, said election to be made before the evidence on behalf of the defendants is commenced, to the end that they, and each of them, may know to what particular charge in each count their evidence is required to be addressed.

FRANCIS A. COFFIN,
PERCIVAL B. COFFIN,
ALBERT S. REED,
By JOHN S. DUNCAN,
LAWSON HARVEY,
F. WINTER, AND
W. H. H. MILLER,
Their Att'ys.

71 And the court, having heard the argument of counsel upon said motion and being sufficiently advised thereon, doth now overrule the same; to which ruling of the court in overruling said motion the defendants, each and severally, by their respective attorneys, now except and are given until the close of the trial herein to file their bill of exceptions; and now come the jury heretofore impanneled and sworn herein, who, having further heard the evidence herein, are by the court allowed to separate until the calling of this cause on tomorrow morning.

And afterwards, to wit, at the May term of said court, on the 16th day of May, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above entitled cause were had, to wit:

Come now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, in person and by their respective attorneys, also come, and said defendants now file their bill of exceptions herein in the words following, to wit:

Be it remembered that on the 15th day of May, 1894, the abovenamed case being on trial in said court before the court and a jury, the Government, by its district attorney, announced that it had completed its evidence and rested it case; and thereupon the defendants filed in open court their motion in writing in the words and figures following, to wit:

72 District Court of the United States, District of Indiana.

THE UNITED STATES
vs.
FRANCIS A. COFFIN, PERCIVAL B. COFFIN, and ALBERT S. REED.

} Indictment for Violation of the National Banking Law.

The defendants and each of them severally move the court to require the Government to elect and specify the particular transaction in each count of the general counts in the indictment in this case, to wit, the 17th, the 18th, the 19th, the 20th, the 21st, the 22d, the 23d, the 24th, the 25th, the 26th, the 27th, the 28th, the 29th, the 30th, the 31st, the 32d, the 33d, the 34th, the 35th, and the 36th counts upon which it relies as a substantive charge and upon which it will claim a conviction of the defendants or either of them, said election to be made before the evidence on behalf of the defendants is commenced, to the end that they and each of them may know to what particular charge in each count their evidence is required to be addressed.

(Signed) FRANCIS A. COFFIN,
PERCIVAL B. COFFIN &
ALBERT S. REED,
By JOHN S. DUNCAN,
LAWSON HARVEY,
F. WINTER, AND
W. H. H. MILLER,
Their Att'ys.

And in support of said motion filed their brief as required by the rules of the court.

73 That thereupon said motion was by the court overruled; to which ruling of the court the defendants and each of them then and there excepted and asked and were allowed time until the completion of said trial to prepare and file their bill of exceptions.

And now on this 16th day of May, 1894, said case being still upon trial in open court, the said defendants present this their bill of exceptions touching said matter and ask that the same may be signed, sealed, and made a part of the record in this case, which is now done accordingly this sixteenth day of May, 1894.

JOHN H. BAKER, *Judge.*

And now come the jury heretofore impanneled and sworn herein, who, having further heard the evidence herein, are by the court allowed to separate until the calling of this cause on tomorrow morning.

74 And afterwards, to wit, at the May term of said court, on the 17th day of May, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now Frank B. Burke, Esq., attorney for the United States,

and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, in person and by their respective attorneys, also come, and the jury heretofore impanneled and sworn herein also come, and, having further heard the evidence herein, are by the court allowed to separate until the calling of this cause on tomorrow morning.

And afterwards, to wit, at the May term of said court on the 18th day of May, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, in person and by their respective attorneys, also come, and the jury heretofore impanneled and sworn herein also come, and, having further heard the evidence herein, are by the court allowed to separate until the calling of this cause on tomorrow morning.

75 And at the same time on said 18th day of May, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the defendants, by their respective attorneys, and file their bill of exceptions upon the ruling of the court overruling the motion of said defendants for a postponement of the trial of the above-entitled cause from the 1st day of May, 1894, and said bill of exceptions is in the words following, to wit:

76 UNITED STATES OF AMERICA:

In the District Court of the United States for the District of Indiana.

UNITED STATES *vs.* FRANCIS A. COFFIN, PERCIVAL B. COFFIN, ALBERT S. REED.	Bill of Exceptions.

Be it known that heretofore, to wit, on the 25th day of April, 1894, the court, over the objection of the defendants' counsel, set this cause for trial for the first day of the May term, to wit, the first day of May, 1894.

That afterwards, to wit, on the 27th day of April, 1894, the defendants in open court, the district attorney and counsel for the Government being present, moved the court for a postponement of the trial from the first day of May, 1894, and in support of said motion filed an affidavit of the defendant Francis A. Coffin; which affidavit is in the words and figures following:

IN THE UNITED STATES OF AMERICA:

In the District Court of the United States for the District of Indiana.

UNITED STATES
vs.
FRANCIS A. COFFIN *et al.*

STATE OF INDIANA, *Marion County,* } *ss:*

77 Francis A. Coffin, being duly sworn, upon his oath says that he is one of the defendants in the above-entitled cause; that Addison C. Harris has been the chief counsel for himself and his codefendants in said cause from the time the said indictment was returned until now; that affiant and his codefendants relief upon said Harris to determine the line and character of their defense in said cause, which he did; that other counsel were subsequently employed to assist in the trial to perform certain specific services, but not to take control of the case; that said Harris has a fuller knowledge of the facts involved in the case than any other counsel has or can have; that said Harris has a personal knowledge of very many transactions, which affiant is informed and believes and therefore avers will be involved in the trial; that said Harris was attorney for the defendants in their business affairs throughout the whole period of time which affiant is informed and believes the investigation in said trial will cover; that many transactions which affiant is informed and believes will be involved in the trial were done and performed by defendants upon the advice and counsel of said Harris.

That said Harris has more fully investigated the law bearing upon the case than any other counsel; that one of the subjects of investigation in said trial is the resources and property and solvency and the nature and extent and character of the business of the Indianapolis Cabinet Company, a corporation; that said Harris, during all the period which the investigation in the trial will cover, was the sole attorney of the said cabinet company, and therefore has personal knowledge of said matters, which, owing to

78 the extent of the business of said company, is superior in the defense to any knowledge which other counsel can in a limited time acquire; that said Harris has prepared and arranged for the preparation of the evidence to be introduced for the defense; that no other counsel have any knowledge of the evidence except a small portion thereof; that for these reasons said Harris has such a grasp of the case, both of the law and the evidence, that it is necessary for the defense that he be present at the trial, and particularly to make the closing argument in the case.

That on, to wit, the 17th day of April, 1894, said Harris was accidentally very seriously wounded in the left arm by a pistol shot; that because of said injury he has from thence until now been unable to take any part in any way, by preparation or otherwise, in this case, and has been unable to give other counsel the benefit of

his personal knowledge and information and preparation of the case; that he was able for the first time to leave his bed for a short time on yesterday, the 26th day of April, 1894. Affiant is informed and believes and therefore states that his recovery from this time will be rapid; that he will be in the course of two or three weeks able to render some service by advice in the case and be so far recovered as to take charge of the defense in this case.

Affiant further states that on April 10th, 1894, he and his codefendants in this case were put upon trial, and that evidence was introduced every day from thence until noon of the 17th day of April following by the Government, at which time, on account of the injury to said Harris herein stated, an adjournment was taken until 2 o'clock of the 24th day of April, 1894; that after-
79 ward further evidence was introduced by the Government until on the morning of April 25th, 1894, the jury was discharged for misconduct of a juror.

Affiant says that the indictment in the above-entitled cause contains fifty counts, covering more than 118 typewritten pages; that it was impossible for the defense or their counsel to anticipate from the contents of said counts or any of them, on account of their indefinite, general, and uncertain statements, that the Government would introduce or seek to introduce a large part of the evidence which was offered and admitted between said dates, April 10 and April 17; that between said dates last mentioned the Government introduced in evidence a great deal of evidence consisting of entries from the books of the Indianapolis National bank—checks, notes, bills, drafts, letters, and other documents—and the testimony of witnesses involving substantially the entire business transactions of the Indianapolis Cabinet Company with said bank and various other companies with said Indianapolis Cabinet Company from January 1st, 1891, to July 25th, 1893, which transactions were very numerous and of large amount; and also the Government intaoduced evidence as to remittances of money by said Indianapolis Cabinet Company through the First National Bank of Chicago, to London, England, said remittances covering the time from January 1, 1891, amounting to over one hundred and ninety thousand dollars and consisting of over two hundred separate transactions, for the purpose of showing that the defendants or some of theni obtained money from the Indianapolis National bank and lodged it at some place in London for the use and benefit of themselves or some of them; that said charge was and is wholly unfounded, as shown by
80 the books of the Indianapolis National bank, but the fact is as shown by said books that at the time the various sums so attempted to be shown to have been taken to London were taken at substantially the same dates much larger sums were paid by the defendants in London to the Indianapolis National bank or their agent; that while this is shown by the books of the Indianapolis National bank to be the fact, yet owing to the method in which entries are made on the books of said bank it was very difficult to discover in the books of said bank the fact that said money was paid as aforesaid in London to said bank or their agent.

That immediately on the adjournment on April 17th, 1894, the defendants and their counsel and clerks began investigating said books with a view to showing the real transactions of which the Government had sought to prove only a part; that owing to the method of book-keeping aforesaid it was necessary for the defendants and their counsel and clerks to go through the transactions of the bank on the many books of the bank, page by page, covering the period from October, 1890, to July, 1893, when the bank closed, without any help from any index, and that this research involved the examination of entries on pages numbering many thousands; that said examination occupied defendants and their counsel and clerks the whole week of the adjournment from April 17 to April 24, and their counsel have had no opportunity to familiarize themselves to any extent with any other part of the case or phase of the evidence introduced; that to fully corroborate the books of the Indianapolis National bank and show the true nature of the transactions aforesaid the defendants and their counsel have had and are having investigations made of the books of the banks in New
81 York and London, who are correspondents and agents of the said Indianapolis National bank during said period and through whom the money received by it from London was paid; that said examination is incomplete, notwithstanding the defendants have used their utmost exertions, and to complete said examinations will require several weeks from this time; that from the effort so made by the Government in the instance referred to to show that the defendants or some of them have fraudulently secreted and converted to their personal use the money so remitted by said Indianapolis Cabinet Company the defendants are advised by their counsel that they should be prepared to show the expenditure of all moneys drawn from said bank by the Indianapolis Cabinet Company or either of them during the entire period covered by the dealings with said bank mentioned in the indictment; that all the books and papers of the Indianapolis National bank are in the possession of the Government, and these defendants have only had access to them by the permission of the persons in charge of them for the Government and in their presence; that all the books and papers of the Indianapolis Cabinet Company passed out of the possession of these defendants, who are the officers of said company, on the 7th day of August, 1893, when a receiver was appointed for said company by the circuit court of Marion county, Indiana, and have remained in the possession of said receiver from thence continuously until the adjournment of this court from April 17th to April 24th, when the Government caused a large part of said books and papers, substantially all of those relating to the transactions with said Indianapolis National bank, to be delivered into the possession of agents and officers of the Government conducting this prosecution, under a
82 *subpœna duces tecum*, and these defendants since then have only had occasional access to such books and papers in the presence of the agents of the Government or by giving receipts, by their counsel, for such papers as were delivered into their possession,

by reason of all which it has been more difficult than it otherwise would have been for the defendants and their counsel to prepare their evidence to meet the case which the Government is endeavoring to establish against them, and since the interruption of the trial by the misconduct of the juror aforesaid the officers of the Government have refused to permit defendants or their counsel to have possession of any of the papers of said Indianapolis Cabinet Company, even upon giving the receipt of their counsel therefor, although the defendants have asked for temporary possession of certain of said papers which are necessary for the preparation of their defense, and offerred to have them receipted for by their counsel.

That the above-entitled cause is one of four cases, commonly known as the bank cases, growing out of the failure of the Indianapolis National bank in July, 1893; that the other three of the bank cases are the cases of The United States *vs.* Schuyler C. Haughey, United States *vs.* Edwin E. Rexford, United States *vs.* Robert B. F. Peirce.

That all said cases, including the above-entitled case, were on the — day of January, 1894, set for trial on April 10, 1894; that said cases of Haughey, Rexford, and Peirce are still upon the calendar of this court.

That in this case defendants are charged with aiding and abetting an officer of a national bank in committing an
83 offense against the laws of the United States.

That in the case of Peirce and Rexford the defendants are charged as officers of said bank; that the said Haughey is charged with aiding and abetting an officer of said bank in the violation of laws of the United States.

That when said cases were set for trial on the — day of January, 1894, for April 10, 1894, as aforesaid, they were set for trial in the following order:

1. The case of Schuyler C. Haughey.
2. The above-entitled case.
3. The case of said Rexford.
4. The case of said Peirce.

And at said time the district attorney in said district announced to the court in the presence of the defendants and their counsel that the cases would be tried in the order in which they were set for trial, after the trial of another case, to wit, the case of The United States *vs.* Theodore P. Haughey; that on April 10, without any notice to the defendants or either of them, the case of said Schuyler C. Haughey was postponed to this cause without the consent of these defendants or either of them.

Affiant is informed and believes and therefore states that there is no reason why the next case upon the calendar, to wit, the case of said Schuyler C. Haughey, should not be taken up and tried and this cause postponed until said Harris is so far recovered as to take charge of the defense of the affiant and his codefendants, and that postponement of the trial is necessary in order to enable the defendants to procure and prepare their evidence, as heretofore stated.

FRANCIS A. COFFIN.

84 Subscribed and sworn to before me this 27th day of April, 1894.

[SEAL.] JOHN W. CLAYPOOL,
Notary Public.

And thereafter, on said 27th day of April, 1894, the court overruled said motion for a postponement; to which ruling the defendants at the time excepted, and sixty days was allowed in which to file a bill of exceptions; and now, within the time so granted, the defendants tender this their bill of exceptions, which is a full, true, and complete bill, and is now accordingly signed, sealed, and made part of the record this 18th day of May, 1894.

JOHN H. BAKER, *Judge.*

85 And afterwards, to wit, at the May term of said court, on the 19th day of May, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, in person and by their respective attorneys, also come, and the jury heretofore impanneled and sworn herein also come, and, having further heard the evidence herein, are by the court allowed to separate until the calling of this cause on next Monday morning.

And afterwards, to wit, at the May term of said court, on the 21st day of May, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, in person and by their respective attorneys, also come, and the jury heretofore impanneled and sworn herein also come, and, having further heard the evidence herein, are by the court allowed to separate until the calling of this cause on tomorrow morning.

And afterwards, to wit, at the May term of said court, on the 22nd day of May, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for
86 the United States, and the defendants, in person and by their respective attorneys, also come, and the jury heretofore impanneled and sworn herein also come, and, having heard the residue of the evidence herein, thereupon the attorney for the United States says he will not further prosecute the 47th, 48th, 49th, and 50th counts of the indictment herein.

It is therefore considered by the court that said defendants, Francis A. Coffin, Percival B. Coffin, and Albert S. Reed, and each of them,

as to the 47th, 48th, 49th, and 50th counts of said indictment, do go hence thereof without day.

And the jury, having heard a part of the argument of counsel herein, are by the court allowed to separate until the calling of this cause on tomorrow morning.

And afterwards, to wit, at the May term of said court, on the 23rd day of May, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, in person and by their respective attorneys, also come, and the jury heretofore impanneled and sworn herein also come, and, having further heard the argument of counsel herein, are by the court allowed to separate until the calling of this cause on tomorrow morning.

And afterwards, to wit, at the May term of said court, on the 24th day of May, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

87 Come now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, in person and by their respective attorneys, also come, and the jury heretofore impanneled and sworn herein also come, and, having further heard the argument of counsel herein, are by the court allowed to separate until the calling of this cause on tomorrow morning.

And afterwards, to wit, at the May term of said court, on the 25th day of May, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, in person and by their respective attorneys, also come, and the jury heretofore impanneled and sworn herein also come, and, having further heard the argument of counsel herein, are by the court allowed to separate until the calling of this cause on tomorrow morning.

And afterwards, to wit, at the May term of said court, on the 26th day of May, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, in person and by their respective attorneys, also come, and the jury heretofore impanneled and sworn herein also come, and, having heard the residue of the argu-

ment of counsel and the charge of the court herein, now re-
88 tire to their room in charge of a sworn bailiff of this court to consider of their verdict herein.

And afterwards, to wit, at the May term of said court, on the 28th day of May, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, in person and by their respective attorneys, also come, and the jury heretofore impanneled and sworn herein also come and return into court the verdict following, to wit:

We, the jury, find the defendants Francis A. Coffin & Percival B. Coffin guilty as charged in all the counts in the indictment, & Albert S. Reed guilty as charged in counts from thirty-seven to forty-six, inclusive, in the indictment.

JOSEPH A. TROTTER, *Foreman.*

And thereupon the defendants are granted one hundred and twenty days' time in which to prepare their bill of exceptions herein.

And, upon motion of the attorney for the United States, the court now increases the amount of the bail of the defendant Francis A. Coffin to the sum of $25,000, and increases the amount of the bail of the defendant Percival B. Coffin to the sum of $12,500, for appearance of each of them before said court on the 4th day of June next and from day to day and term to term thereafter, and the marshal of said district is directed to take said defendants, Francis A. Coffin and Percival B. Coffin, into custody until the execution of bonds for their appearance as aforesaid.

89 And afterwards, to wit, at the May term of said court, on the 4th day of June, 1894, before the Honorable John H. Baker, judge as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Frank B. Burke, Esq., attorney for the United States, and John W. Kern, Esq., special assistant to the attorney for the United States, and the defendants, in person and by their respective attorneys, also come and file their motion on behalf of all and each of them for a new trial herein in the words following, to wit:

90 District Court of the United States, District of Indiana.

THE UNITED STATES *vs.* FRANCIS A. COFFIN, PERCIVAL B. COFFIN, and ALBERT S. REED.	No. 4926. Motion for a New Trial.

The defendants and each of them severally move the court to set aside the verdict and grant a new trial in this case for the following reasons, to wit:

1st. Because the court erred upon the trial in overruling the defendants' motion, made at the conclusion of the Government's evidence, that the Government be required to elect as to the particular transaction in each count upon which it would claim a conviction under the general counts of the indictment, the same being numbered from seventeen (17) to thirty-six (36), inclusive.

2nd. Because the court erred in permitting the witness Hugh Young to state his conclusions as to the manner and purpose for which the mortgage bonds of the Indianapolis Cabinet Company were held in the bank when, as matter of fact, said witness had no knowledge on the subject except what was derived from papers and books in the bank, which were the best evidence.

3d. The court erred in permitting the witness Edward
91 Hawkins, receiver of the Indianapolis National bank, to testify as to his classification of the assets of said Indianapolis National bank as scheduled and forwarded to the department at Washington, upon the ground—

a. That the defendants are not to be bound by any classification he may have made.

b. That the schedule itself, being in writing, would be the best evidence.

4th. The court erred in allowing the same witness to give to the jury his opinion as to the value of the assets of the Wooten Office Desk Company, he not showing that he had any knowledge whatever on the subject.

5th. That the court refused to permit the defendants, upon the cross-examination of said Edward Hawkins, receiver, which followed his direct examination, to cross-examine him in detail in reference to the character and valuations of the paper held by him as receiver on account of the debts of the Indianapolis Cabinet Company, but required the defendants to postpone such cross-examination for some days, until after a large amount of other testimony had been taken.

6th. The court erred in permitting any evidence to be introduced under any of the counts of the indictment for the reason:

a. It is not shown that the defendants had any knowledge of the alleged wrongful acts of said Haughey.

b. It is alleged that said Haughey acted with the intent to
92 convert the property to the use of the Indianapolis Cabinet Company, but it is not alleged that such conversion was actually made.

c. As to many of the counts it is alleged that said Haughey acted with such intent to convert to the use of said cabinet company, and also to injure and defraud the association, while it is not charged that the defendants acted with a like intent.

d. Because the indictment shows that the transactions complained of were in the nature of loans by the bank to the Indianapolis Cabinet Company, and such transactions are not within the denunciation of section 5209 of the statutes of the United States, the defendants not being officers or in any way connected with said bank.

7th. Because, as the indictment did not allege that the defendants

knew that said Haughey was president of the Indianapolis National bank, the same charged no crime against them.

8th. Because the court erred in allowing evidence to be introduced under count one (1) of the indictment charging a misapplication when the amount in said count for which the check was alleged to be drawn by which such misapplication was made was expressed in pounds, and the value of a pound sterling is not stated in said indictment, and said count states no facts constituting a crime.

9th. The court erred in expressing to the jury, during his cross-examination of the witness L. V. Horton, his views as to the effect of the testimony offered on behalf of the defendants, in disparagement of said testimony, said expression by the court being as follows:

93 "The COURT: It does not appear from the testimony of this witness that the Wooten Company had a cent's interest in this. It may be that the jury will view it differently from what I do. I simply say that in my judgment it shows that in all this stuff the Wooten Company hadn't one single cent—not a cent. It is not cross-examination, and I will sustain the objection."

And again:

"You may show anything over there. You asked him what orders he had there. The objection was that the witness was testifying to the work that was done here by the Indianapolis Cabinet Company and never passed out of the ownership and control of the Indianapolis Cabinet Company, and with which the Wooten Company had no more to do than I have."

And again:

"I am simply stating the impression made on my mind. The jury will not take the court's impression of it, however, if the jury thinks the court is mistaken about the facts."

And again:

"I will endeavor at the proper time to see that the instructions to the jury conform to the forms of law. I state to the jury that if they do not view it as I do it is their duty to view it as they think is right."

The defendants objected and excepted at the time to these statements by the court "because, as we understand the law, it is the duty of the jury to withhold their minds from forming an

94 opinion as to the case until all of the evidence was heard, whereas the effect of these declarations by the court was to induce them to form opinions then and there."

10th. The court erred in holding that under the indictment charging that the name of the said bank was "The Indianapolis National Bank of the City of Indianapolis, in the State and district of Indiana," evidence was admissible of the organization of "The Indianapolis National bank" and of the management of said "The Indianapolis National bank," and that said Theodore P. Haughey was president of said "The Indianapolis National bank," and any acts of his as such president were provable under any of the counts of the indictment.

11. The court erred in refusing to give to the jury each of the instructions asked by the defendants numbered from two (2) to forty-five (45), inclusive; to which refusal to give each of said instructions the defendants excepted before the retirement of the jury.

12th. The court erred in giving to the jury each of the parts of the instructions as they were given by him to the jury, as the same were marked on said court's instructions and set out in the statement of such exceptions, numbered from one (1) to twenty-seven (27), inclusive, as such parts of said instructions were filed in this court on the 26th day of May, 1894, such exceptions to such parts of said instructions so excepted to having been taken in open court before the retirement of the jury.

95 13th. Because the verdict of the jury is not sustained by sufficient evidence and is contrary to law.

(Signed) JOHN S. DUNCAN,
MILLER, WINTER & ELAM,
LAWSON HARVEY,
Def'ts' Att'ys.

And the court, having heard argument upon said motion and being sufficiently advised, doth now overrule the same; to which ruling the defendants severally except.

And said defendants now file their motion on behalf of all and each *and* them in arrest of judgment herein in the words following, to wit:

The defendants and each of them hereby move the court for an arrest of judgment in this case for the reason that neither count of said indictment states facts sufficient to constitute a crime under the statutes of the United States.

JOHN S. DUNCAN,
MILLER, WINTER & ELAM,
LAWSON HARVEY,
Att'ys for Def'ts.

And the court, having heard argument thereon and being sufficiently advised, doth now sustain the same as to the 17th, 18th, 19th, 20th, 21st, 22d, 23d, 24th, 25th, 26th, 27th, 28th, 29th, 30th, 31st, 32d, 33d, 34th, 35th, and 36th counts of said indictment, and doth overrule the same as to the 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 37th, 38th, 39th, 40th, 41st, 42d, 43d, 44th, 45th, and 46th counts of said indictment; to

96 which last ruling of the court the defendants now severally except, and the court doth now allow said defendants one hundred (100) days from this date to file their bill of exceptions.

And the court doth now find, upon the verdict of the jury heretofore rendered herein, that said defendants, Francis A. Coffin and Percival B. Coffin, are guilty as charged in said 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 37th, 38th, 39th, 40th, 41st, 42d, 43d, 44th, 45th, and 46th counts of said indictment, and that said defendant, Albert S. Reed, is guilty as charged

in said 37th, 38th, 39th, 40th, 41st, 42d, 43d, 44th, 45th, and 46th counts of said indictment; and the defendants having been severally inquired of what they had to say why the sentence of the law should not be pronounced on the verdict of the jury, each severally answered, "Nothing."

It is therefore considered and adjudged by the court that said defendants, Francis A. Coffin and Percival B. Coffin, are each guilty as charged in the 1st, 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, 12th, 13th, 14th, 15th, 16th, 37th, 38th, 39th, 40th, 41st, 42d, 43d, 44th, 45th, and 46th counts of said indictment, and that said defendant, Albert S. Reed, is guilty as charged in the 37th, 38th, 39th, 40th, 41st, 42d, 43d, 44th, 45th, and 46th counts of said indictment; and it is further considered by the court that said defendant, Francis A. Coffin, for the offense so charged, be imprisoned and confined in the Northern prison of the State of Indiana for the term of ten (10) years, and that he do pay unto the United States the costs of this prosecution, taxed at $—; and it is further considered by the
97 court that said defendant, Percival B. Coffin, for the offence so charged, be imprisoned and confined in the Northern prison of the State of Indiana for the term of five (5) years, and that he do pay unto the United States the costs of this prosecution, taxed at $—.

And the court doth now suspend sentence and judgment as to the defendant Albert S. Reed during his good behavior, and said Albert S. Reed is required to enter into his personal recognizance in the sum of $1,000 for his appearance, and said defendant, Albert S. Reed, now in open court acknowledges to owe and be indebted unto the United States in the penal sum of one thousand dollars, to be levied of his goods and chattels, lands and tenements, if default be made in condition following—that is to say, that he be and appear in this court from day to day of the present term thereof and from term to term thereafter to answer unto the United States upon the charge against him, and not depart without its leave.

And afterwards, to wit, at the May term of said court, on the 9th day of June, 1894, before the Honorable John H. Baker, judge as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the defendants Francis A. Coffin and Percival B. Coffin, by their attorneys, and file their bill of exceptions herein in the words following, to wit:

98 District Court of the United States, District of Indiana.

THE UNITED STATES *vs.* FRANCIS A. COFFIN, PERCIVAL B. COFFIN, and ALBERT S. REED.	No. 4926. Bill of Exceptions.

Be it remembered that on the trial of this cause the Government of the United States presented evidence to the jury tending to show

that the Indianapolis National bank, named in the indictment, was and is a corporation duly organized under the laws of the United States providing for a national currency and for the organization and management of national banks; that the Indianapolis Cabinet Company was and is a corporation duly organized under the laws of the State of Indiana providing for the creation of manufacturing and mining companies; that Theodore P. Haughey, from its organization in 1864 to the time of its suspension in 1893, on the 25th day of July, in said year, was the president of said Indianapolis National bank, and for the last ten years was practically the sole manager of its affairs and business; that the said Indianapolis National bank, at the time of its suspension, was very largely insolvent, its assets, including its capital stock, which was $300,000, being largely inadequate to the payment of its debts; that said
99 bank, by the mismanagement and wrongful loans and unauthorized use of the moneys of said bank by its said president, had, at the time of its suspension, accumulated a very large amount of notes, bills of exchange, and other assets of doubtful value or entirely worthless; that of said indebtedness to said bank, at the date of its failure, the Indianapolis Cabinet Company was owing from $350,000 to $375,000; that on the 7th day of August, 1893, said Indianapolis Cabinet Company stopped business and was placed in the hands of a receiver for the purpose of winding up its business, by decree of the circuit court of Marion county, Indiana, said proceeding being still pending; that at said date and at the date of the failure of said bank, on July 25th, 1893, it was claimed by the Government, and there was evidence tending so to prove, that said Indianapolis Cabinet Company was insolvent and that its assets would not pay more than fifty per cent. of said indebtedness, though it was claimed on behalf of the defendants, who were all officers of said Indianapolis Cabinet Company and had been such during all the period covered by said indictment, that the assets of said corporation were adequate to the payment of its debts, and there was evidence tending so to prove.

Be it further remembered that it was admitted in said cause that the defendant Francis A. Coffin had been connected with said Indianapolis Cabinet Company, as one of its officers and directors, from its organization in 1880 and for several years last past had been its president and controlling officer; that the defendant
100 Percival B. Coffin had also been for several years last past a director and officer of said corporation; but that said Reed had only been connected with said corporation since the — day of ——, 18—.

And be it further remembered that evidence was introduced on behalf of the Government tending to prove that from time to time during the last five years the defendants Francis A. Coffin and Percival B. Coffin had caused to be organized a number of other corporations, to wit, the United States Office Furniture Company, the Indianapolis Office Furniture Company, the Indianapolis Veneer and Panel Company, the Indiana Cabinet Company, the Indianapolis Desk Company, and the Wooten Office Desk Company,

and had obtained control of the Indianapolis Plow Company, in the name of which several corporations the defendants had caused indebtedness to be incurred to the Indianapolis National bank by notes, drafts, bills of exchange, &c., several of said corporations having no assets, others of the same having assets largely disproportioned to the amount of said indebtedness so incurred, by means of which corporations said Indianapolis Cabinet Company had procured to its own use of the moneys, funds, and credits of said bank to like amounts; that it was claimed on behalf of the Government, and its evidence tended to prove, that said corporations were organized and operated with a view to enabling the said Indianapolis Cabinet Company to procure in their names a larger credit in said Indianapolis National bank and to evade the law forbidding money exceeding ten per cent. of the capital stock of the bank to be loaned to any one person, the said several corporations being under
101 the absolute control of the said defendants as the executive officers and directors of said Indianapolis Cabinet Company; on the other hand, the defendants claimed, and introduced evidence tending to show, that said corporations were organized and carried on for the purpose of facilitating the business of manufacturing and selling desks under the general control of the Indianapolis Cabinet Company, some of them being organized for the purpose of preventing the use of names so near like that of the Indianapolis Cabinet Company as to interfere with the use of the latter, others, as the Indianapolis Desk Company, for the purpose of purchasing and selling the goods of the Indianapolis Cabinet Company and other parties in London, the Indiana Cabinet Company for like purpose in Boston, the Indianapolis Office Furniture Company for like purpose in New York, and the United States Office Furniture Company for the purpose of handling a cheaper grade of desks than that sold under the name of the Indianapolis Cabinet Company.

And be it further remembered that on behalf of the Government it was claimed, and its evidence tended to show, that paper issued in the name of each of said corporations other than the Indianapolis Cabinet Company was not based upon any values, but was "sham" paper, used only for the unlawful purpose of evading the law limiting the amount of loans by a national bank as aforesaid, and that, notwithstanding said law, some of said corporations, as the Indiana Cabinet Company of Boston and two or three
102 others, at the date of the failure of said bank were indebted to said bank in sums largely in excess of ten per cent. of its capital stock, as was also said Indianapolis Cabinet Company entirely independently of the indebtedness for which it was responsible in the name of said several other corporations.

And be it further remembered that on behalf of the Government it was claimed and evidence was introduced tending to show that the defendants during the period covered by the indictment had, with the knowledge, consent, and by the permission of the said Theodore P. Haughey, been in the constant habit of making large overdrafts on the account of said Indianapolis Cabinet Company in said bank, such overdrafts at the times amounting to $40,000 or

Company and paid out of the funds of said cabinet company largely by checks on said bank to the stockholders of said cabinet company, all or nearly all of whom were near relatives of the said Coffins. There was also evidence tending to prove that profits were earned by said cabinet company during the time in which said dividends were paid exceeding in amount the dividends so paid, and that such excess of the profits was retained in the business of the company and went to increase its plant and other assets.

And be it further remembered that upon said trial there was evidence tending to prove that after the failure of said Indianapolis National bank on the 25th day of July, 1893, the said defendants caused the property in the hands of the Indiana Cabinet Company at Boston and Indianapolis Office Desk Company at New York to be sold to persons theretofore in their employ, taking the notes of such persons secured by chattel mortgage on said property for all or nearly all of said purchase-money, and used said notes or a large part thereof in the payment of alleged indebtedness to certain persons claimed by the defendants to be creditors of said cabinet company, including the sister-in-law of the said defendants, Francis A. Coffin and Percival B. Coffin, in the sum of ten thousand dollars, and Mrs. Swift, a distant relative, in the *the*
sum of two thousand five hundred dollars, and others, cred-
107 itors but not relatives, whom they wished to prefer, the indebtedness to said sister-in-law being upon promissory notes of the company given to her for dividends declared upon stock of the company held by her.

And be it further remembered that there was also evidence tending to show that such sales and preferences were made pursuant to legal advice and for the purpose of preventing the property so sold from being wasted by attachment proceedings.

Be it further remembered that on the trial of said cause Edward Hawkins, a witness for the Government, being upon the stand, and it having been shown that he was the receiver of the Indianapolis National bank, and he having testified that on their face the assets of said bank at the time he took possession amounted to $2,098,268.65, the following questions were asked by the Government and answers given, objections and rulings made, and exceptions taken by the defendants and each of them, to wit:

Q. What was the general character of the assets—that is, as to being good, worthless, or doubtful?

To which question defendants severally objected as follows:

Mr. MILLER: If your honor please, we do not think he can characterize the whole assets of the bank in that way.

The COURT: He can make a division, but he need not characterize the whole.

108 Mr. KERN: I am asking him to state how those assests in regard to the division that he was required to make up were designated. I think I may do that.

The COURT: He may answer.

To which ruling of the court the defendants, by their counsel, then and there duly and severally excepted.

A. The assets were scheduled and forwarded to the department as "good assets, $878,946.04."

Counsel for defendants then and there further objected to the question as follows:

Mr. MILLER: If your honor please, if there was a schedule of these assets made and forwarded to the department, the best record of them is the department records themselves. I do not think he can prove orally before a jury the contents of a paper made in that way, and I object to it on that ground.

The court overruled the objection; to which ruling of the court the defendants, by their counsel, at the time duly and severally excepted.

Q. Of what did the balance of good assets—that is, those denominated good, consist—that is, after taking out the $375,000 in bonds held by the Government?

To which question counsel for defendants then and there objected as follows:

109 Mr. WINTER: It seems to us that this is an effort on the part of the Government to get at the question of the valuation of the paper of this cabinet company in a roundabout way. I do not see the materiality nor the purpose of it.

Mr. KERN: We have the right to show how this bank was wrecked and that it was wrecked.

Mr. MILLER: We are not to be bound here by any classification that was made by Mr. Hawkins at the time. He can give his opinions as to the value of this paper now, but as to some information that he gave somebody six months ago or a year ago as to the value of this paper we insist it is not material.

The COURT: I understand the witness to be speaking of his present information.

Mr. MILLER: No, sir; he is stating what was written in the paper and sent to the Comptroller.

The COURT: I do not so understand it. He can refresh his memory by looking at the original paper or any copy.

To which ruling of the court the defendants, by their counsel, at the time duly and severally excepted.

A. It consists of some overdrafts, furniture, and fixtures,
110 real estate, reserve deposits, deposits as reserve in banks, deposits in national banks, deposits in State banks, remittances out for collection, cash and cash items, and bills receivable.

And be it further remembered that immediately after the foregoing testimony the same witness being upon the stand on behalf of the Government he was asked the following questions and gave the following answers; to which questions and answers objections and rulings thereon were made and exceptions taken on behalf of

the defendants, as stated in connection with said questions and answers, to wit:

Q. How much of the paper of this cabinet company, the Indianapolis Cabinet Company, and its auxiliary companies and individuals was totally unsecured and was marked by you as worthless?

To which question counsel for defendants then and there objected.

The COURT: He need not state how it was marked.

Mr. KERN: Strike off the last words, "and marked by you as worthless."

The WITNESS: $150,376.29.

Q. Mr. Hawkins, after your investigation what, in your judgment, is the value of the claim of the Indianapolis National bank against the Wooten Office Desk Company of Richmond of $48,565.33?

111 To which question the defendants several-y objected as follows:

Mr. WINTER: The witness has not stated anything about his investigation at Richmond. He stated that he made inquiries around here, and that there is no plant here.

The COURT: The value of the testimony, of course, would depend upon the thoroughness of the investigation.

Mr. KERN: I understood you to say that you had been over to Richmond?

WITNESS: No, sir; the attorney for the bank corresponded with the attorneys for the bank over there and I got my information in that way.

Mr. MILLER: Our objection is on the ground that the witness has not shown to have any knowledge whatever of the assets of the Wooten Office Desk Company or to have made any personal investigation or inquiry about it. The information is simply derived from hearsay; all that he has is derived from correspondence with an attorney. He has not shown that the attorney himself has made any inquiry in the matter.

The court overruled the objection; to which ruling of the court the defendants, by their counsel, at the time duly and severally excepted.

A. If my figures are correct, and I think they are, $21,759.43 — that is unsecured, and I consider it worthless.

Be it further remembered that the same witness being upon the stand and having given his opinion as to the value of the paper of the Indianapolis Cabinet Company and other corporations
112 hereinbefore referred to organized by and under the control of the officers of said last-named corporation, said witness was turned over for cross-examination to the attorneys for the defendants, and thereupon the following proceedings were had, questions asked, objections made, and rulings made by the court and exceptions taken on behalf of the defendants, to wit:

"Q. Now, Mr. Hawkins, in the total amount stated yesterday of $375,860.50, I understand that to include all paper that you found in the bank upon the Wooten Office Desk Company, which its name was upon in any capacity; the Indiana Cabinet Company, whose name was on in any capacity; the United States Office Furniture Company, whose name was on in any capacity; the Indianapolis Desk Company, whose name was on in any capacity; the Indianapolis Veneer and Panel Company, whose name was on in any capacity, the Indianapolis Office Furniture Company, its name in any capacity; the Indianapolis Plow Company, its name in any capacity; and the Indianapolis Cabinet Company, its name in any capacity. That is correct, isn't it?

A. Yes, sir, and other paper besides that.

Q. Well, so far as that I have gone; and of that paper you have stated and included in this amount of $370,876.50 every piece of paper that you found in the Indianapolis National bank on which the name of the Indianapolis Cabinet Company appeared as maker, drawer, acceptor, or endorser. That is correct, isn't it?

A. That is correct.

113 Q. And among that paper you included paper on the Emerson-Moore Desk Company?

A. Yes, sir.

Q. To what amount?

A. It was between eight and nine hundred dollars.

Q. Can you state the amount any more accurately than that?

A. A piece of $268, a piece of $291.10, and $345.30. They are notes of the Indianapolis Cabinet Company, endorsed by the Emerson-Moore Desk Company.

Q. Have you those notes here?

A. I presume they are in this bunch. I haven't gone over this bunch at all. These papers have all been in the hands of the attorneys here and Mr. Hayes and I haven't been through them at all.

Mr. KERN: Mr. Hayes says they are at the bank.

Mr. WINTER: I want the record to show, if the court please, that upon the adjournment of the court on the evening of the 2nd day of May, having requested the witness to produce for the purpose of cross-examination all the paper of the Indianapolis Cabinet Company or upon which the Indianapolis Cabinet Company or other concerns with which it was connected were liable, which were referred to in his direct examination, and the amount of which was stated in his direct examination as $376,870.50, and now desiring to cross-examine the witness in reference to the item testified to by him in *him* direct examination as being included in this total

114 amount of paper on the Emerson-Moore Desk Company to the amount, as stated in such direct examination, of about eight hundred dollars, and that the defence now purpose to examine the witness in reference to the character of this paper with a view to showing in what capacity the Indianapolis Cabinet Company is liable upon it, the witness having stated that the Indian-

apolis Cabinet Company was liable upon it as maker, and that the witness is requested to produce the paper, which is in his possession as receiver of the Indianapolis National bank, for the purpose of being cross-examined in reference to that paper in order to elicit its true character and the true relation of the Indianapolis Cabinet Company to it.

The COURT: And the court refuses to permit it on the ground that the paper is not before it and on the ground that no steps were taken by the defense as required by law to have it produced in court; on the ground that the witness has not referred to it except from a memorandum from which he testified, and on the further ground that if the paper referred to should be produced in evidence by the Government the court has advised counsel that an opportunity will be given them to examine witness upon it.

Mr. WINTER: Let the record show that just previous to the adjournment of court upon the evening of the 2d day of May, when the witness was being examined in chief, he is requested by the counsel for the defendants, in the presence of the court, to produce the paper referred to in his direct testimony, including that of the Emerson-Moore Desk Company, for use in his cross-exami-
115 nation, and that he agreed to do so in the presence of the court.

The COURT: The court, however, was no party to the agreement.

Mr. WINTER: That the court refused to permit us to examine the witness in the line indicated at the present time, and that the defendants each severally except.

* * * * * * *

Q. Have you the paper here to which you have testified upon which the Wooten Office Desk Company appears to be liable?

A. Notes and drafts?

Q. Yes.

A. Yes, sir.

Q. Will you produce them?

To which question counsel for the Government then and there objected as follows:

Mr. BURKE: The Government makes the objection because that paper is part of the testimony of the Government in chief in this case, and with the statement of the court that at the proper time the notes and papers called for will be submitted to the jury and to the inspection of the defendants' counsel.

The COURT: And the court sustains the objection and states that at the proper time when the paper- have been produced in the orderly progress of the trial counsel will be permitted to recall the witness and examine about it if it becomes necessary to do so, and that the court will not permit the Government's case to be
116 interjected by the defense on the cross-examination of this witness, and the defendants may severally have an exception.

Mr. WINTER: We desire the record to show, if the court please, that the witness having been requested immediately before the ad-

journment of the court on the 2nd day of May to produce in court all the paper referred to in his grand total, that he may be cross-examined in reference to its character, and he having stated that he would produce it, that the paper is now, as stated by the witness, in court ready to be produced. Counsel for the defense desire at this stage, as a part of the cross-examination of the witness, to inquire of him with reference to this paper and to exhibit the paper to him upon cross-examination with a view to testing the correctness of the statements that he has made as to the character of the paper involved in the grand total testified to by him, and that to the ruling of the court in not permitting the witness to produce the paper each defendant severally excepts."

That several days afterwards, after a large amount of other testimony had been taken and after the Government had introduced in evidence the paper constituting said indebtedness of said Indianapolis Cabinet Company and said other companies, said witness Hawkins was directed by the court to take the witness stand for said cross-examination on behalf of the defendants; which cross-examination was by defendants' counsel declined.

Be it further remembered that, the witness Lewis J. Robin-
117 son being on the stand as a witness on behalf of the Government, the defendants and each of them objected to any evidence being given in support of any of the counts of said indictment for the reason:

1st. That in none of said counts was it alleged that the defendants at the time of their alleged criminal acts knew that said Haughey was the president of said bank; and—

2nd. That neither of said counts allege that said defendants had any knowledge of the alleged wrongful acts of said Haughey; which objections were overruled by the court; to which ruling the defendants and each of them then and there excepted.

And be it further remembered that, the same witness being upon the stand, the defendants and each of them objected to any testimony being given on behalf of the Government on any count of said indictment for misapplication in which it was not alleged that either the moneys, funds, or credits of the bank were actually converted to the use of the Indianapolis Cabinet Company, the allegation being only of an intent to so convert; which objection was overruled by the court; to which ruling the defendants at the time excepted; and it was further objected by the defendants to any evidence being offered under any count of said indictment for aiding and abetting by them of said Haughey in the misapplication of the funds of said bank or in the making of false entries in the books of said bank, because it was not alleged that the defendants or either of them were officers, directors, or employees of said bank, as none
of them were in fact officers, directors, or employees of said
118 bank; which objection was by the court overruled; to which ruling the defendants and each of them at the time excepted, and thereupon said witness testified and gave evidence tending to support each count of said indictment; and the defendants further

objected to the introduction of any evidence under the first count of this indictment for the reason that the charge of misapplication in said count was insufficient, inasmuch as the court could not take judicial notice of the value of a pound sterling and the same was not alleged in said indictment, and that said count failed to aver that either the Indianapolis Cabinet Company or Indianapolis Desk Company was insolvent, and failed in other ways to state facts sufficient to constitute a crime under section 5209 of the Revised Statutes of the United States; which objection was overruled by the court; to which ruling defendants each then and there excepted, and thereupon said Robinson testified as to the value of a pound sterling and generally in support of said count.

And be it further remembered that the witness LEWIS J. ROBINSON, a witness on behalf of the Government, being upon the witness stand, the following questions, objections, answers, and rulings of the court were made and exceptions on behalf of the defendants were taken, to wit:

Q. Mr. Robinson, can you give an account of three checks that were drawn by the cabinet company on the 10th day of December, 1892, aggregating $7,000?

To which question and the testimony sought to be elicited upon this transaction counsel for defendants objected as follows:

Mr. MILLER: We object to any evidence under this count for the reasons, first, that it is not alleged in the count that the defendants had any knowledge of the misapplication by Mr. Haughey as president of the bank; in the second place, it is shown in the count that Mr. Haughey acted with intent, as is alleged, to convert the property to the use of the Indianapolis Cabinet Company; it is not
119 alleged that the property was converted to the use of the Indianapolis Cabinet Company; it is also alleged that Mr. Haughey acted with intent to injure and defraud the association, while only the single intent to injure and defraud the association is alleged to have animated the aiders and abettors.

The court overruled the objection; to which ruling the defendants each severally excepted.

Mr. MILLER: If your honor will permit me, there is one other objection that we want to put in there: That it appears in the indictment that this was in the nature of a loan by the bank to the Indianapolis Cabinet Company, and that within the meaning of the national banking law, as we think it has been construed, the loaning of money or a transaction of this kind between a party borrowing money of a bank through the president of the bank that it cannot be aiding and abetting an officer of the bank in the misapplication.

The COURT: The objection is overruled. I think that if a bank president, from any sinister purpose, either to cover past dereliction of duty or otherwise, allows himself to get in the hands of outsiders and then he wilfully misapplies the money on sham paper, paper that he knows to be worthless and the parties that present it knew to be

worthless, that they do in point of fact touch each other in such sense as that there is a principal on one side and aiders and abettors on the other. It would be a sorry state of the law if a corrupt banker standing on the inside of the counter could loot the
120 bank in favor of criminals that stood on the outside of the counter and there was no law to reach them.

To which ruling and statement of the court the defendants each severally excepted.

And be it further remembered that on the trial of said cause the Government offered documentary evidence to show the organization, extension of the charter, etc., of said bank, said documents showing the organization and reorganization of a bank named the Indianapolis National bank, whereas in the indictment the name used is the Indianapolis National Bank of the City of Indianapolis, in the State and district of Indiana, which, as defendants claimed, amounted to a variance between the indictment and the proof, and therefore objected to said evidence; which objection was by the court overruled; to which ruling the defendants and each of them then and there excepted.

Be it further remembered that the witness L. V. HORTON, a witness on behalf of the Government, being upon the stand, and said witness being under cross-examination by Mr. WINTER, one of the counsel for the defendants, the following proceedings were had, including questions, answers, objections, remarks by the court and counsel, and exceptions were then and there taken on behalf of the defendants and each of them as noted, to wit:

Q. I will ask you to what extent the business of the receiver there has consisted in the disposal of the Wooton desks.

121 Objected to by counsel for the Government as not cross-examination.

Mr. WINTER: It goes to show the value of the Wooton property.

The COURT: It does not appear from the testimony of this witness that the Wooton Company had a cent's interest in this. It may be that the jury will view it differently from what I do. I simply say that in my judgment the whole evidence shows that in all of this stuff the Wooton Company hadn't one single cent—not a cent. It is not cross-examination and I will sustain the objection.

Mr. WINTER: It seems to me, if your honor please, that it is legitimate cross-examination upon the value of the property that was sold over there; their effort was to show that there was nothing there; we propose to show that it was of value, and if this evidence tends in any degree to show the value of the property and the business the company was doing——

The COURT (interrupting). You may show anything over there. You ask him what orders he had there. The objection made was that the witness was testifying to work that was done here by the Indianapolis Cabinet Company and never passed out of the
122 ownership and control of the Indianapolis Cabinet Company and with which the Wooton Company had no more to do than I had.

Mr. WINTER: The proposition I have here is this. This witness has testified that the cabinet company was not able to furnish goods to fill the orders he had for these goods. Now I propose to show that even after it went into the hands of the receiver these orders had to be filled by the receiver, and that a good part of the work of the receiver was in filling orders that had been obtained prior to his appointment.

The COURT: I am simply stating the impression made on my mind. The jury will not take the court's impression of it, however, if the jury think the court is mistaken about the facts.

Mr. MILLER: We want the benefit of an exception to the way in which it is expressed now.

The COURT: You can have the benefit of it.

Mr. MILLER: We except to the expression of the opinion given to the jury now as to the effect of the evidence.

The COURT: I will endeavor, at the proper time, to see that the instructions to the jury conform to the forms of law. I state to the jury that if they do not view it as I view it, it is their duty to view it as they think is right.

123 Be it further remembered that in support of the first count of the indictment the Government offered in evidence a check drawn by the Indianapolis Cabinet Company on the Indianapolis National bank for the sum of $5,802.84, and that the defendants at the time objected to the introduction of said check in evidence, because, as they claimed, the averment in the indictment called for a check for 1,194 pounds sterling; which objection was by the court overruled; to which ruling the defendants then and there excepted, and said check so offered was admitted in evidence and no check for 1,194 pounds sterling was offered or admitted in evidence in support of said count, but evidence was introduced by the Government showing that the value of a pound sterling varied in the money of the United States from about $4.85 to $4.89 during said period, depending upon the demand for exchange.

Be it further remembered that the Government introduced evidence tending to show that during the period covered by said indictment the Indianapolis Cabinet Company by the defendants caused to be transmitted to London a large amount of funds procured from the Indianapolis National bank by discounting and causing to be discounted a large number of bills of exchange and drafts made by said Indianapolis Cabinet Company upon said Indianapolis Desk Company, and that the defendants introduced evidence tending to prove that the sums of money so drawn out of the Indianapolis National bank were drawn out for the purpose of being used to take up drafts drawn by the Indianapolis Cabinet Company on the Indianapolis Desk Company of London, which before that time
124 had been discounted by said Indianapolis National bank and endorsed and rediscounted by it or sent forward for collection for its account, and which at the time said sums of money were so drawn out were about to mature, and that said sums of money so drawn out were, in fact, used to take up said drafts and

were repaid to said Indianapolis National bank as the proceeds of the collection of said drafts.

Be it further remembered that the Government introduced evidence tending to show that on the first day of January, 1891, the indebtedness of said cabinet company to said bank aggregated the sum of $129,000, and that the indebtedness continued to increase thenceforward until the time of the failure of said bank when it aggregated the amount hereinbefore stated, and the Government claimed and introduced evidence tending to show that at the time of said failure the assets of said Indianapolis Cabinet Company amounted to not more than $183,000. On the other hand, the defendants claimed and introduced evidence tending to show that during all said time the greater portion of said increase of debt was caused by additions to said plant, extensions of said business, and increase of stock on hand of said Indianapolis Cabinet Company, and that the assets of said company were during said time increased to at least $500,000.

Be it further remembered that the defendants claimed upon the trial of said cause and introduced evidence tending to prove that during all the time during which they had transactions with said bank Mr. Haughey, the president of the bank, kept himself
125 fully informed as to the condition of the business of the Indianapolis Cabinet Company and made personal examinations from time to time as to the extent of its property and business, and that with his co-operation efforts had been made by the defendants to effect a reorganization of said company with an increased capitalization for the purpose of paying its indebtedness to the bank, and had been and were being made at the time of the failure of the bank to effect the sale of its mortgage securities for the same purpose, and that extensions of its business were made and carried on under separate corporate organizations in New York, Boston, London, and Richmond, Indiana, and by taking from its business at Indianapolis certain parts thereof and carrying the same on under separate corporate organizations for the purpose in part of inducing other manufacturers in the same line to take an interest in the business of said companies with a view to obtaining additional capital, whereby the indebtedness of said companies to said bank could be discharged or largely reduced, and that both said Haughey and the defendants believed in good faith that said Indianapolis Cabinet Company was solvent, and that by means of these efforts or some of them and from the business of the companies, which the evidence tended to show was increasing, and the cessation of expenditure in completing the plant and establishing its business, which there was evidence tending to show was near at hand to the knowledge of said Haughey; that by continuing to loan money to said company it would within a reasonable time be able to discharge all of its
126 indebtedness to the bank, and that the moneys of the bank, which were received by said company during the time covered by the indictment, were loaned by said Haughey in good faith to enable said company to continue in business and in the reasonable expectation that the same would be repaid, and that neither

said Haughey nor either of the defendants had any intent to defraud or injure said bank or deceive any agent appointed to examine said bank in any of said transactions, all of which there was evidence tending to prove.

Be it further remembered that there was evidence tending to show that during all of the time covered by the transactions between said company and said bank said Haughey was the president of the bank and its largest single stockholder, and that he had at no time any pecuniary interest whatever in the Indianapolis Cabinet Company or any of the other companies connected with it or any relation thereto as officer or employee; that he was not related in any way to the defendants or any of the other stockholders or officers of the Indianapolis Cabinet Company or of any of the companies connected with it, and that he did not receive or expect to receive in his individual capacity any benefit whatever from any of the transactions between the bank and said cabinet company or any of the companies connected with it or any benefit therefrom, directly or indirectly, except as president and stockholder of the bank, and that neither the defendants nor any other person connected with or interested in the Indianapolis Cabinet Company or any of the companies connected with it as officers, employees, or stockholders had any interest in the Indianapolis National bank as shareholders or otherwise or with said Haughey in any relation whatever.

Be it further remembered that upon the same subject the
127 Government introduced evidence tending to show that the character of the business carried on and directed by the defendants was not such nor its management such nor its capital such as to warrant any expectation that said business would improve or that it would be able to repay the moneys that were so advanced by said bank to said cabinet company, and that said transactions were not in the nature of *bona fide* loans made upon any expectation or reasonable hope of repayment.

Be it further remembered that there was evidence tending to show that the receiver of the Indianapolis National bank when appointed took possession of all of the mortgage bonds of said Indianapolis Cabinet Company found in said bank amounting to $247,000, secured by mortgage on all of the property, plant, and assets of said company, and that he still retains and claims to hold the same as an asset of said bank pledged for the security of the indebtedness of said Indianapolis Cabinet Company and the various other companies connected therewith.

Be it further remembered that upon the trial of said cause no evidence was introduced showing or tending to show knowledge or lack of knowledge on the part of the grand jurors as to the persons or names of persons or parties alleged in the several counts of said indictment to be to the grand jurors unknown.

Be it further remembered that there was evidence tending to prove upon said trial that from time to time during the period covered by said indictment the Indianapolis Cabinet Company
128 placed in said bank and obtained credit upon accommodation paper, and that the Indianapolis Cabinet Company was

liable as drawer, acceptor, or indorser of said paper and of all other paper discounted by it in said bank and for which it got credit or that the payment of the same was secured by the bonds of the Indianapolis Cabinet Company hereinbefore referred to pledged as collateral.

Be it further remembered that there was evidence tending to show that in many instances the evidences of indebtedness held by the Indianapolis National bank at the time of its failure against the Indianapolis Cabinet Company and other persons and companies connected therewith mentioned in the indictment were simply renewals of other evidences of indebtedness which had previously been held by the bank, some of them antedating the first day of December, 1890.

Be it further remembered that there was evidence tending to show that at the time the Indianapolis Veneer and Panel Company, the United States Office Furniture Company, the Wooten Office Desk Company, the Indianapolis Desk Company, the Indianapolis Office Furniture Company, and the Indiana Cabinet Company were about to begin business as separate and distinct organizations from the Indianapolis Cabinet Company and said last-named company was about to transfer, sell, and ship to each of said companies large quantities of the manufactured products and stock of goods belonging to said Indianapolis Cabinet Company and which were covered by the mortgage to secure the payment of the bonds of said company pledged as collateral to said Indianapolis National bank to secure the indebtedness of the cabinet company to said bank, that Mr. Haughey, the president
129 of the bank, being informed of the organization of said companies and of the proposed transfer, sale, and shipment of goods to said companies expressed apprehension that the property so transferred, sold, and shipped would be withdrawn from under the lien of said mortgage, and that the security of the bank might thereby be in danger, and as a condition to his consent to such transfer, sale, and shipment and all future transfers, sales, and shipments to said companies demanded of the defendants that as the same were made renewals of evidences of indebtedness of part of the debt of the Indianapolis Cabinet Company to said bank should be put in the shape of drafts drawn upon and accepted by the companies receiving such property, so that the bank might at all time, while the indebtedness of the cabinet company to it continued, stand in the position of a creditor of each of said companies to whom property was so transferred and shipped, and that thereupon renewals of the paper of the Indianapolis Cabinet Company were made by means of drafts so drawn upon and accepted by said companies.

Be it further remembered that the Government introduced in evidence-in-chief all of the checks drawn by the Indianapolis Cabinet Company upon the Indianapolis National bank, and paid by said bank from the 1st day of January, 1891, to the 25th day of July, 1893, said checks consisting of a large number and to the aggregate amount of $1,750,000.00, and also all the evidences of indebtedness held by said bank against the Indianapolis Cabinet Company and the various companies under its control, and against the defendants

Francis A. Coffin and Percival B. Coffin, after having given in evidence in support of the counts charging general misapplication a number of particular transactions other than those mentioned in the specific counts. Nor did the Government at any time elect any particular transaction upon which it would rely for the conviction of the defendants under said general counts or any of them.

130 Be it further remembered that at the conclusion of the evidence in said cause and before the commencement of the argument the defendants presented to the court a request in writing that he would give to the jury each of certain instructions, numbered from two (2) to forty-five (45), inclusive, but the court declined to give to the jury all and each of said instructions as asked; to which action of the court in refusing to give each of said instructions the defendants and each of them, before the retirement of the jury, did then and there except and were allowed 120 days in which to file their bill of exceptions; said instructions so requested by the defendants and refused to be given by the court are as follows, to wit:

131 District Court of the United States, District of Indiana.

THE UNITED STATES
vs.
FRANCIS A. COFFIN, PERCIVAL B. COFFIN, and ALBERT S. REED. } No. —.

The defendants and each of them severally request the court to give to the jury each of the following instructions, to wit:

I.

* * * * * * *

132 II.

The indictment consists of 46 counts, each of which purports to charge a separate and independent violation of this statute, constituting a separate and independent crime. Before you will be authorized to render a verdict of guilty against the defendants or either of them it must have been proven, not merely that the defendants or one of them so found guilty has committed some wrongful act, but it must appear from the evidence beyond a reasonable doubt that such defendant has committed the precise act charged in some one or more of the counts of the indictment, since the Government is entitled to a verdict only in case it has proved the particular wrongful act or acts alleged in some one of the counts of the indictment against one or more of the defendants.

133 III.

The statute under which this prosecution is made is a highly penal statute and is to be strictly construed and, while you have nothing to do with determining the law of the case, which in this court is for the judge alone, yet, being a statute of the character

named, offences charged thereunder must be proven strictly according to its terms, and, failing such proof in this case, the defendants are entitled to a verdict of not guilty.

IV.

As already stated, each count of this indictment must, upon the proof, stand or fall by itself. So far as your consideration goes, each count stands as if it were a separate and independent indictment, and you have to consider the particular charge made against the defendants in each count and the proof applicable thereto precisely as if that were the only charge in the indictment, and your finding upon each count must be guilty or not guilty as the proof applicable to that particular count proves or fails to prove that specific charge.

V.

The first count of the indictment, which purports to charge a wilful misapplication of the funds of the bank by the said Haughey as president, with the intent to defraud the association, alleges that the Indianapolis Cabinet Company presented to the bank
134 and to Haughey as its president a bill of exchange for the sum of one thousand one hundred and ninety-four pounds sterling (1,194), which bill of exchange was received by said Haughey, placed to the credit of said cabinet company upon the books of said bank, and that thereupon said cabinet company drew its check for said sum upon said bank, which was then and there paid by said bank under the direction of said Haughey.

You will observe that the charge is that the cabinet company drew its check for "said sum," namely, for one thousand one hundred and ninety-four pounds sterling. There is no allegation in this count as to what a pound sterling is. As matter of fact, the proof is that the check was for the sum of five thousand eight hundred and two dollars and eighty-four cents ($5,802.84). Whether this is a larger or smaller or an equivalent sum to one thousand one hundred and ninety-four pounds sterling is not alleged in the indictment, and upon this state of the allegations and proof I instruct you that the Government is not entitled to a verdict on this count, and, therefore, as to the first count your verdict must be not guilty.

VI.

In each of the counts of said indictment based upon the alleged wilful misapplication of the moneys, funds, or credits of said bank, it is charged and it is necessary to be charged in such count that such misapplication was made by said Haughey as president of the bank, but in none of said counts is it alleged that the said defendants or either of them charged with aiding and abetting said Haughey knew at the time that he was president of such bank. In
135 the absence of such averment of knowledge on their part no sufficient charge of crime is made against them and, therefore, upon each of such counts your verdict must be not guilty.

VII.

If upon the whole proof it appears that Mr. Haughey, in permitting or causing the money, funds, or credits of the bank to be applied to the use of the Indianapolis Cabinet Company at any of the times charged in the indictment, did so, not because he wished to defraud or injure the bank or any other person or party or deceive the bank examiner, but because he believed that under all the circumstances so to do was for the best interest of the bank, then, as to such counts for misapplication, your verdict should be not guilty.

VIII.

If upon all the facts proven in the case it appears that at each of the times at which Mr. Haughey, president of the bank, is charged in the indictment with having made a criminal misapplication of the moneys, funds, or credits of the bank, the condition of the bank and of the Indianapolis Cabinet Company were such that for the bank to have refused further credit to the cabinet company would probably have resulted in the failure of that company and of the bank, and if it further appears upon all the evidence that
136 Mr. Haughey, knowing or in good faith believing such to be the case, did furnish such further aid to the cabinet company with the *bona fide* hope and intention of saving the bank from disaster and not with the intent to injure the bank or any one else or deceive the bank examiner, then your verdict should be not guilty as to all counts charging such criminal misapplication of the funds of the bank.

IX.

A misapplication of the funds by a president can only be aided and abetted by parties who are acting with him to a common end and with a common intent. If in this case the defendants, by reason of the large indebtedness of the Indianapolis Cabinet Company, held the bank and the president in their power, and he fearing that a refusal of further credit to them would result in a disclosure of the amount of their said debt and the ruin of his bank, and for this reason let them have the money and paid their checks, then said Haughey and said defendants did not act with a like intent and this proof would not sustain the indictment for misapplication.

X.

An essential element of the offence charged in each count of this indictment is the alleged wrongful intent. The charge in each count for the misapplication of the moneys, funds, and credits of the bank is that Haughey, the president, committed the acts
137 alleged with intent to injure and defraud the bank or some other persons or corporations or to deceive certain officers and directors of the bank, and that the defendants aided and abetted him with like intent. In order to warrant a verdict of guilty on any of these counts for misapplication, therefore, you must be satisfied from the evidence beyond a reasonable doubt, not only that Mr. Haughey did the particular acts charged, and that the defend-

ants aided and abetted him therein, but you must be further satisfied from the evidence beyond a reasonable doubt that Mr. Haughey did said acts with the criminal intent aforesaid, and that the defendants aided and abetted him in such acts with a like criminal intent.

XI.

The making of *bona fide* loans of the money of the bank by the president thereof was not a misapplication of the funds of the bank within the meaning of this statute, even though such loans may have been made to parties who were insolvent and known by the president to be so at the time such loans were made. If, therefore, upon the whole evidence in this case it appears that the moneys, funds, and credits of the bank charged to have been misapplied by the president were in fact *bona fide* loans, even though upon insufficient security, your verdict upon the counts charging misapplication must be not guilty.

138 XII.

On behalf of the Government it is claimed that the moneys, funds, and credits of the bank furnished to the Indianapolis Cabinet Company, as charged in the various counts of the indictment for misapplication, were not *bona fide* loans, but that the same were wholly fictitious and the paper upon which they were based was utterly worthless. On the other hand, the defendants claim that for all of the indebtedness of the Indianapolis Cabinet Company to the bank the entire property and assets of said cabinet company were liable, first, under the mortgage executed by said cabinet company, and, second, as general debts of that corporation; and they further claim that the assets of said corporation, at the time of the failure of the bank and during all the time while such advancements were being made, were of the value of several hundred thousand dollars. If upon all the proof it appears that the paper upon which such loans were made was of real and substantial value, and that the bank is now holding and seeking to collect such paper out of the assets of said cabinet company, then you cannot hold such paper to be worthless and said loans to be wholly fictitious, and upon such state of the proof you would not be warranted in basing a verdict of guilty upon the theory that such transactions were not *bona fide* loans.

139 XIII.

Whether the transactions by and through which Mr. Haughey let the cabinet company have the moneys, funds, and credits under consideration in this case were *bona fide* loans by the bank to the cabinet company, as contended by the defendants, or were simply pretences used to cover the misapplication of such moneys, funds, or credits, as contended by the Government, is a question of fact for your exclusive determination on the evidence and under the rules of law as given you by the court.

140 XIV.

The intent on the part of Mr. Haughey in the alleged misapplications of the moneys, funds, and credits of the bank is an essential ingredient of the offence charged against the defendants because it is alleged that they acted with like intent. In determining the question, therefore, of Mr. Haughey's intent you should take into consideration the relation he bore to this bank, both as an officer and a shareholder, and whether the evidence shows any motive on his part for defrauding or injuring the bank or deceiving any officer or the bank examiner or any other person, and it is for you to say, in the light of all this proof, whether Mr. Haughey, in letting the cabinet company have such moneys, funds, or credits, did so with such criminal intent. If the proof does not satisfy you of such criminal intent, then the Government's case is not made out. In determining this question you may consider whether Mr. Haughey was asking credit of the bank at this time or seeking to obtain any of its property or was in any way benefitted by the loans or advances to the cabinet company. If you find from the proof that such motives existed on the part of Mr. Haughey they might go far toward satisfying you that the guilty intent existed; but if, on the contrary, you find from the proof that there was no such motive or object on the part of Mr. Haughey, it should weigh upon the other side of the scale and at least tend to show that there was no such intent as is charged.

141 XV.

If you shall find it to be a fact that said Haughey paid to the cabinet company and allowed it to receive the moneys, funds, and credits of the bank in excess of ten per cent. of its capital stock, such fact does not of itself sustain the charge of a criminal misapplication of the funds of the bank. It is true the statute provides that no more than ten per cent. of the capital stock of the bank shall be loaned to any one person or party, but it does not make it a crime on the part either of the bank officers to make or of the customer to receive loans in excess of that sum. In order to bring the case within the denunciation of this statute as a crime, it must be shown not merely that such excessive loan was made, but that it was made with the criminal intent aforesaid, and in order to sustain the charge against the defendants it must be shown that they aided and abetted with the same or like intent.

142 XVI.

The 37th count of the indictment charges that on the 30th day of March, 1892, the said Haughey, as president, made a certain false entry in one of the individual ledgers of said bank, whereby the said cabinet company was given a credit of $20,480.76; that said entry was known by said Haughey at the time to be false and was made with intent to injure and defraud the bank.

The 38th count makes the same charge, except that the intent

imputed to Haughey was to deceive any agent or bank examiner sent by the Comptroller to examine the bank.

Each count charges that the defendant aided and abetted Haughey, with like intent as that charged against him.

The 39th and 40th counts of the indictment in like manner charge a false entry made by Haughey as president on one of the individual ledgers of the bank on the 9th day of May, 1893, such entry giving to the cabinet company a false credit of $44,000, in the 39th count the intent charged being to deceive the bank examiner and in the 40th count to injure & defraud the association.

As to each of these counts, the charge of aiding and abetting is made against the defendants with like intent in each as charged against Mr. Haughey.

The 41st and 42nd counts charge similar false entries, differing only as to time and amount, as do also the 43d, 44th, 45th, and 46th counts.

With reference to each of these counts charging the making of false entries the intent to injure & defraud the bank or to deceive the bank examiner is the essence of the offence and must not only be proven, but must be proven as laid in the indictment and beyond a reasonable doubt. It must appear from the evidence that the false entries complained of, if they were false, were either made to injure & defraud the bank or to deceive the bank examiner. If
143 the proof shows only an intent to defraud some party other than the bank or to deceive some party other than the bank examiner, it would not be sufficient. An intent to deceive other persons, creditors, or depositors of the bank or to deceive the Comptroller or the public in regard to the standing of the bank will not sustain the charge of making false entries, which you are sworn to try, so that the proof must satisfy you, not only that the entries complained of were false, but that they were made with the specific intent alleged. In determining this question of intent with reference to these alleged false entries, as in relation to alleged misapplications, you should take into consideration the relation Mr. Haughey bore to this bank as an officer and shareholder, as well as any efforts he is shown by the evidence to have made to protect the interests and sustain the credit of the bank from time to time; and it is for you to say, in the light of this proof, whether Mr. Haughey by these false entries, if you find that they were false and that he made them, intended to injure or defraud the bank or deceive the bank examiner or whether they were simply designed to sustain the credit of the bank with its depositors or other creditors and with the Comptroller and the public who dealt with the bank. If the proof does not satisfy you that Mr. Haughey acted with the criminal intent charged, then the Government's case as to these counts is not made out.

In this connection you may properly inquire, in the light of the proof, whether Mr. Haughey had any motive to injure or defraud the bank or to deceive the bank examiner. Does the evidence show that he was asking credit of the bank at the time or seeking to obtain any of its property, or that he would be benefitted by the making of this false entry, if such entry was false? If you find

from the proof that false entries were so made, and that he had such motives, they might go far toward satisfying you that the
144 guilty intent existed, but if, on the contrary, you find that there was no such motive or object on the part of Mr. Haughey, it should weigh upon the other side of the scale and at least tend to show that there was no such intent as is charged.

145 XVII.

It is equally true that the intent to injure and defraud the bank or to deceive the bank examiner is the essence of the offence charged against the defendants as aiders and abettors of Mr. Haughey, the president, in making false entries. In order to convict them on any count relating to false entries the proof must not only show that Mr. Haughey did the acts complained of with the specific criminal intent charged, but it must also be shown that the defendants aided and abetted him with like specific criminal intent—that is, they must have acted either with an intent to injure or defraud the bank or to deceive the bank examiner. If, upon all the facts proven in relation to false entry charges, you should have a reasonable doubt whether the defendants acted with the intent to injure or defraud the bank or to deceive the bank examiner, the Government's case as to these counts would not be made out against them.

146 XVIII.

In considering the false entry charges in this indictment it is necessary that you shall know what constitutes a false entry. The books of account of a bank are kept for the purpose of accurately and truly recording the financial transactions of the bank. An entry upon the books of the bank of some alleged transaction which never occurred or of a transaction which did occur but which is falsely recorded would be a false entry; but any entry in which that which has been done by the officers or agents of the bank is correctly set forth in detail is not a false entry. If, therefore, you find from the evidence, for instance, with reference to the alleged false entry in the 40th count, that the bank had actually given to the cabinet company the credit for $44,000 upon the paper presented by the cabinet company and had authorized said cabinet company to make its checks against said credit, and that said entry was made upon the books simply as a truthful record of that which had been done, then the same was not a false entry, but was and is a true entry, and the indictment, so far as based upon such entry, cannot be sustained.

147 XIX.

If Mr. Haughey, as president of the bank, received from the cabinet company drafts, bills, or notes which, by reason of the insolvency of the parties or for any other reason, ought not to have been received and gave to said cabinet company credit therefor and afterwards caused an entry of such credit to be made upon the books of

the bank, then whatever wrong was done in the matter by Mr. Haughey was not in causing such entry to be made, but was, further back, in receiving the paper and giving the credit. Not to have made the entry after receiving the paper and giving the credit would have been to commit another wrong, since it was his duty as president of the bank to see that the books should speak the exact truth as to that which he had caused to be done, and, however wrongful may have been his previous act, the making of an exact and truthful record of the same in the books of the bank was and could be no crime under this statute.

148 XX.

A good deal of evidence has been introduced by the Government and by the defendants with reference to the value of the plant and other assets of the Indianapolis Cabinet Company. Some of this evidence had relation to the value of the property during the years 1890, 1891, and 1892, some of it with relation to the value at the time of the failure in 1893, and some of it with relation to the value of it after the failure of the bank and the cabinet company, and from that time to this. Some question has been made in the introduction of the testimony as to what is the proper basis for the valuation of this property. So far as the evidence of values is important, it should have relation to the time during which the alleged wrongful acts charged against the defendants were committed and the time or times at which they were obtaining the money, funds, or credits from the bank, and such values should be determined with reference to all the circumstances surrounding said cabinet company and said business at those times, namely, from about the 6th day of January, 1891, until near the time of the failure in 1893. This value is to be measured not by what the property would bring at a forced sale under the hammer, nor at a fancy price which might be placed upon it by a holder not wishing to sell. The true criterion is its market value, and "the market value of property is the price which it will bring when it is offered for sale by one who desires but is not obliged to sell and is bought by one who is under no necessity of having it." In estimating its value, all the capabilities of the property and all the uses to which it may be applied or to which it is adapted are to be considered. In the language of the Supreme Court of the United States, "the inquiry in such cases must be, What is the property worth in the market, viewed not merely with reference to the uses to which it is at the time applied, but with reference to the uses to which it is plainly adapted—that is to say, what is it worth from its availability for valuable uses? * * *

149 Its capability being made thus available gives it a market value which can be readily estimated." Applying these rules and considering all the evidence on the subject which has been placed before you, both by the Government and by the defendants, you will be able to arrive at a just conclusion as to the fair market value of this property during the period in controversy.

150 XXI.

In order to warrant a conviction of the defendants as aiders and abettors of Mr. Haughey in the making of false entries, as charged in this indictment, it is not enough to show that the entries were false and that Mr. Haughey made them with the criminal intent charged, but it must also be shown by the evidence beyond a reasonable doubt that the defendants had knowledge of the making of such entries and that they did acts aiding and abetting Mr. Haughey in making the same with like criminal intent. Proof of the fact that the defendants presented the paper covered by the false entry and received credit for the same is not sufficient to warrant their conviction for aiding and abetting the making of the false entry on the books unless some knowledge of or connection with the making of such false entry is brought home to them

XXI½.

If you find from the evidence that the Indianapolis Cabinet Company's account in the Indianapolis National bank being overdrawn the defendants or either of them, as officers of such cabinet company and at the request of Haughey, president of the bank, furnished to said bank bills, drafts, and notes of parties possessed of little or no means aggregating an amount sufficient to balance and more than balance such account, which said Haughey as president received and placed to the credit of said cabinet company in said account, such action on the part of said Haughey giving such credit and entering the same in the books of the bank, whatever may have been his motive, was not making a false entry within the meaning of this statute.

151 XXII.

In each of the thirty-six counts of this indictment, based upon the alleged misapplication of the moneys, funds, and credits of the bank by Mr. Haughey, except the 1st, the 19th, the 29th, the 32nd, and the 33d counts, it is charged that the Indianapolis Cabinet Company at the time of the alleged misapplication was insolvent and that the said Haughey knew of such insolvency. This averment having been thus made in these several counts of the indictment, it was necessary that the same should be proven in order to warrant a conviction. If, therefore, it has not been shown by the evidence beyond a reasonable doubt that the Indianapolis Cabinet Company at such times was insolvent and that the said Theodore P. Haughey knew of such insolvency at said times, then, as to each of said counts containing said charge, the Government has failed to sustain its case.

152 XXIII.

A person charged with crime in this court is entitled to a statement in the indictment of the facts alleged to constitute such crime, sufficiently definite and specific to enable him to know with what

wrongful acts he is charged and fairly to prepare his defense. For this purpose the grand jury in framing the indictment are required to state facts, names, and circumstances material to an intelligent description of the alleged offence. From the necessity of the case, when such material facts, names, and circumstances are unknown and cannot by reasonable diligence be learned by the grand jury, the statement of the same in the indictment may be excused by an averment showing such lack of knowledge or inability to acquire the same. But such averment of lack of knowledge is a material averment in the indictment and must be proved like any other material fact therein, and a failure to make such proof, both of such lack of knowledge and of inability to acquire the same by reasonable diligence, is a failure of proof which will defeat such indictment or the particular count in which it may be alleged.

153 XXIV.

Each of the forty-six counts of this indictment, except the 1st, the 40th, the 41st, and the 43d, alleges that certain facts therein referred to are unknown to the grand jury. Thus the 2nd, 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, and 12th counts each avers a misapplication of the funds of said bank by said Haughey with intent to convert the same to the use of the Indianapolis Cabinet Company and to other persons to the grand jurors unknown. The averment that the names of these persons were unknown to the grand jurors is a material averment and is necessary to be proven by the Government in order to make out its case in each of said counts, because in each of said counts the charge is of a misapplication of a single, definite, fixed sum with an intent to convert the same to the use, not merely of the cabinet company, but of other persons. If, as a matter of fact, no evidence has been placed before you showing or tending to show that the names of such persons were unknown to the grand jury, then, as to these counts, the Government's case has failed.

154 XXV.

In the 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22nd, 23d, 24th, 25th, 26th, 27th, 28th, 29th, 30th, 31st, 32nd, 34th, 35th, and 36th counts it is charged that said Haughey misapplied the moneys, funds, and credits of said bank, "a more particular description of said moneys, funds, and credits being to the grand jurors unknown." This averment that a more particular description was to the grand jurors unknown is a material averment in each of these counts, and if no proof has been made sustaining this averment then the Government, as to such counts, has failed to make out its case and the defendants are, as to the charges in such counts, entitled to an acquittal.

155 XXVI.

In the 13th, 14th, and 15th counts it is charged that the said Haughey as president made a criminal misapplication of the

moneys, funds, and credits of the bank, not only with intent to convert the same to the use of said Indianapolis Cabinet Company and other persons to the grand jurors unknown, but, after stating the amount of such misapplication, it is alleged that a more particular description of said moneys, funds, and credits were to the grand jurors unknown, and that said moneys, funds, and credits were in fact paid to the use and benefit of said Indianapolis Cabinet Company and divers other persons to the grand jurors unknown. Each of these averments of lack of knowledge on the part of the grand jury is a material averment in the count requiring to be supported by proof in order to make out the Government's case under such count, and if such proof has not been placed before you, then, as to such counts, the defendants are entitled to an acquittal.

156 XXVII.

In the 24th, 25th, 26th, 31st, and 34th counts of the indictment it is charged that said Haughey gave to said Indianapolis Cabinet Company credit on the books of said bank for a large number of worthless and insolvent notes, drafts, and bills of exchange in a large amount, a more particular description of which is to the grand jurors unknown. This averment of lack of knowledge on the part of said grand jurors is a material averment in each of said counts, and if the same has not been proven by evidence placed before you, then as to each of those counts there is a failure of proof, and the defendants are entitled to an acquittal.

157 XXVIII.

In the 27th count, a count for misapplication, it is charged that the alleged acts of misapplication were done by said Haughey with intent to deceive certain officers and directors of said association, whose names are to the grand jurors unknown. This averment of lack of knowledge on the part of the grand jurors is a material averment in said indictment, and a failure to prove that such grand jurors had not such knowledge is a failure to sustain the count by sufficient proof and requires a verdict of acquittal upon that count.

158 XXIX.

In counts No. 28 and 29, being counts for misapplication, it is averred that the acts of misapplication charged to have been done by said Haughey "were done and performed with intent to injure and defraud said association and certain companies, bodies politic, bodies corporate, and individual persons whose names are to the grand jurors unknown." This averment of lack of knowledge on the part of the grand jurors is a material averment in each of these counts, and, if it has not been proven by evidence placed before you on this trial, demands a verdict of acquittal from you upon each of these two counts.

159 XXX.

In the 33d count, which is a count for misapplication of the moneys, funds, and credits of the bank, it is charged that the acts of misapplication were performed by the said Haughey with an intent to injure and defraud said bank and divers other persons to the grand jurors unknown. This averment of lack of knowledge on the part of said grand jurors is a material averment in this count necessary to be proven by the Government, and, if no evidence has been placed before you showing such lack of knowledge on the part of the grand jurors, the proof upon this count is insufficient and entitles the defendants to an acquittal thereon.

160 XXXI.

In the 38th, 39th, 42nd, 44th, and 46th counts of this indictment, being counts for false entries, it is charged that such false entry in each count was made by said Haughey with intent to deceive any agent appointed or who might thereafter be appointed by the Comptroller of the Currency to examine the bank, the name or names of such agent and agents being to the grand jurors unknown. This averment of lack of knowledge on the part of such grand jurors is a material averment in each of these counts, and, if not supported by proof—that is, if it is not shown by evidence introduced before you upon this trial that the said grand jurors did not know the name of such bank examiner or examiners, then the Government has failed to make the necessary proof upon each of these counts and the defendants are entitled to an acquittal thereon.

161 XXXII.

In the testimony in this case evidence has been offered on behalf of the Government to prove that at times the account of the Indianapolis Cabinet Company with the Indianapolis National bank was largely overdrawn—that is, that the cabinet company had drawn out from the bank a greater sum of money or other funds than it had deposited. If you shall find from the evidence that such was the fact, and that Mr. Haughey, president, permitted such overdraft to be made, that fact alone would not be sufficient to show any criminal intent on the part of Mr. Haughey. While an overdraft is not, perhaps, a regular and approved method of making loans from a bank, yet loans are not infrequently made by banks in that form and, in the absence of other criminating circumstances, are not within the denunciation of the statute upon which this transaction is based.

162 XXXIII.

In each of the counts in this indictment for misapplication, being counts from one to thirty-six, inclusive, it is averred that the said Haughey, with criminal intent, misapplied the moneys, funds, and credits of the bank. By the section of the statute upon which this

prosecution is based it is made a crime for the president to misapply with such criminal intent either the moneys, the funds, or the credits of the bank—that is, a misapplication of the moneys would be one crime, a misapplication of the funds would be another crime, and the misapplication of the credits would be a third and distinct crime. This being so, each of these counts is objectionable upon the ground of duplicity—that is, of charging more than one offence—and therefore no conviction can be had thereon.

163 XXXIV.

Some evidence has been given in this case tending to prove that the defendants, as officers of the Indianapolis Cabinet Company, and some of the other corporations organized as subsidiary thereto, have made drafts for moneys upon persons and parties when no money was due or owing by such drawee to the drawer. If you find from the evidence that such drafts were made, the same not being drawn against values or upon parties owing the money so drawn for, such fact will not of itself warrant the conclusion that such drafts were either wholly fictitious or fraudulent, especially if you shall further find that such drafts were made for accommodation by an understanding between the drawer and drawee; and if you shall find further that such drafts or paper, if placed in the bank for discount, were in whole or in substantial part secured by bonds or other collateral or was of real substantial value, this fact will be a further circumstance for your consideration, tending to show the good faith of such transactions with the bank.

XXXV.

If you find from the evidence that moneys were advanced by the Indianapolis National bank to the Indianapolis Cabinet Company for the purpose of assisting to start a branch of the business of the said company in London under the name of the Indianapolis Desk Company or to pay the drafts of said Indianapolis Cabinet Company on said Indianapolis Desk Company with the understanding that said moneys were to be returned and that they were in fact returned to said Indianapolis National bank, then you will not be warranted in finding that such moneys were misapplied by said Haughey, or that the defendants committed any crime in aiding and abetting him in such use of the funds of the bank.

164 XXXVI.

The counts of the indictment relating to misapplication charge a misapplication of the moneys, funds, and credits of the bank. A charge of misapplication of the credits of the bank is not sustained by merely showing that the bank gave to the cabinet company credit to which it was not entitled, unless it is also shown that as a result of such credit the cabinet company was enabled to and did withdraw from the bank moneys, funds, or resources of some kind. Thus, evidence of the giving by the cabinet company and the re-

ceiving by the bank of renewal paper upon which nothing was withdrawn from the bank would not sustain the charge of criminal misapplication of the credits of the bank.

165 36½.

Evidence has been introduced before you upon the trial with reference to a draft drawn by the Indianapolis Cabinet Company on a party called the Tufts Cabinet Company and accepted by the latter, and also with reference to a note signed in the name of the Tufts Cabinet Company, payable and delivered to the Indianapolis Cabinet Company. On behalf of the Government it is claimed that said Tufts Cabinet Company never had any existence, but was purely fictitious. As no specific charge in any count of the indictment is based upon these transactions relating to the Tufts Cabinet Company, the same cannot be considered by you as a substantive charge of wrong-doing under any count of the indictment unless it has been shown to your satisfaction beyond a reasonable doubt that the grand jury at the time the indictment was found had no knowledge of this transaction and by the exercise of reasonable diligence could not have acquired such knowledge.

166 XXXVII.

By the statute of limitations the defendants cannot be prosecuted for any offence committed more than three years prior to the finding of the indictment in this case. If you find from the evidence that a considerable part of the moneys, funds, or credits obtained from the Indianapolis National bank by the Indianapolis Cabinet Company were so obtained prior to such period of three years, then as to such moneys, funds, or credits no prosecution can be maintained for misapplication either against Mr. Haughey or the defendants. There must be evidence separating and distinguishing beyond a reasonable doubt the transaction which occurred prior to such period from those which occurred within such period, and, unless the evidence does so separate and distinguish such transactions beyond a reasonable doubt, there can be no conviction of the defendants or either of them upon any of the counts charging willful misapplication growing out of and based upon such intermingled and unseparated transactions.

167 XXXVIII.

If you shall find from the evidence that articles of association were from time to time filed by the defendants in accordance with the statutes of the State of Indiana for the creation of corporations within such State under the statutes of the State providing for the incorporation of manufacturing companies, then, as matter of law, such corporations were thereby created even though you should find that nothing was paid into the treasury of such corporation as capital stock, and on such facts such corporation would not be a fictitious person.

168 38½.

Evidence has been introduced upon the trial with reference to a draft drawn by the Indianapolis Cabinet Company on the Tufts Cabinet Company and accepted in the name of the latter company, and also with reference to a note given in the name of said Tufts Cabinet Company to the Indianapolis Cabinet Company, and it is claimed on behalf of the Government that there never was any such organization as said Tufts Cabinet Company, but that the same was wholly fictitious. This evidence has been permitted to be introduced before you for the purpose of throwing light upon the intent of the defendants in the management of the business of the Indianapolis Cabinet Company in connection with the charges of wrong-doing by them in the varied counts of the indictment. This evidence can only be considered by you for this purpose, as there is no charge in any count of the indictment based upon this particular transaction.

169 XXXIX.

If there is evidence sufficient to raise a reasonable doubt in your minds as to whether or not any of the notes, drafts, or acceptances which were discounted by the Indianapolis National bank or placed to the credit of the Indianapolis Cabinet Company in its account with said bank or which were given in renewal of notes or drafts which had been so discounted or credited were executed in consideration of the fact that property of the Indianapolis Cabinet Company upon which the Indianapolis National bank held a mortgage was about to be shipped from the factory of said Indianapolis Cabinet Company to the parties to said notes or drafts other than the Indianapolis Cabinet Company and in consideration of the consent of the Indianapolis National bank to such shipment and at its request for the purpose of putting it in the position of a creditor of such consignee, then, as to such notes or drafts, you cannot find that they were executed without a valuable consideration or that they were accom-odation paper, and the execution of such paper and its acceptance by the bank would not be a willful misapplication of the moneys, funds, or credits of said bank.

170 XL.

Ignorance of penal laws constitutes no defense to an indictment for their violation, but this rule has no application where knowledge or notice of the situation or facts invoking the enforcement of the law is necessary.

With such knowledge of facts the intent to offend accompanies the act. Without such knowledge or notice the evil intent is lacking.

See Pettibone *vs.* United States, 148 U. S. Op., p. 207.
Reynolds *vs.* United States, 98 U. S. Op., p. 167.

XLI.

The law looks at the circumstances from the standpoint of the accused at the time he did the act, and if the accused has made proper inquiry and used due diligence and care, but still has been misled concerning the actual facts and acts as he would be justified in doing were the facts what he believed them to be, his ignorance is justified and he is legally innocent as he is morally innocent.

People *vs.* Lamb, 54 Barbour, 342.
Yates *vs.* People, 32 N. Y., 509.
4 Blackstone's Com.. 27.
Leavitt's case, 1 Hale C. P., 474.
Clark's Criminal Law., p. 68.
1 Bishop's Criminal Law, sec. 302.

171 XLII.

While in criminal matters it is a general rule that every person must answer for his own acts, and that the command of no person can excuse an illegal act (4 Blackstone's Com., 28), yet, if under all the circumstances it appears that a defendant did the act charged by the order of one in authority over him and believed in good faith that the master had a right to order the act to be done, the doing of the act would not amount to an offense on the part of the agent.

Smith, "Master and Servant," pp. 404 and 405.

XLIII.

In cases of this character jurors must not only have a conscientious belief of the guilt of the accused, but they must have a conscientious conviction that there is no reasonable doubt of the guilt.

Wratten *vs.* State, 80 Ind., 394.

Such a conviction as to the defendants' guilt must be produced by the evidence that a prudent man would feel safe to act upon that conviction in his most important matters. If such conviction is not so produced a reasonable doubt exists.

Farrell *vs.* State, 58 Ind., 293.
Bradley *vs.* The State, 31 Ind., 492.

172 XLIV.

The law presumes that persons charged with crime are innocent until they are proven by competent evidence to be guilty. To the benefit of this presumption the defendants are all entitled, and this presumption stands as their sufficient protection unless it has been removed by evidence proving their guilt beyond a reasonable doubt.

173 XLV.

You are the exclusive judges of the weight of the testimony and the credibility of witnesses, and you alone have a right to determine

and it is your sworn duty to determine all questions of fact upon the evidence. Whatever discussion of the evidence or of the facts in the case has been or shall be made by the court is designed for your assistance in the way of suggestion only. The court has neither the right nor the desire to control you in weighing the evidence and reaching your own conclusions upon the facts of the case.

174 And thereupon the court did give to the jury the following and no other instructions, to wit:

175 GENTLEMEN OF THE JURY: The parties to this prosecution are men who have long occupied conspicuous positions in the business and social life of this community. Their reputation for honesty and integrity at the time of the transactions involved in this investigation was above question or suspicion. Naturally this would be so, for without such reputation they could not have attained to the high and responsible stations which they have occupied. Whether honest or dishonest, one admitted to such places must have an assured reputation for business ability and integrity; and hence it is that the class of offenses denounced by the national banking act always concerns men of the highest standing for ability and integrity. This accounts for the severe penalties denounced by Congress against the violation of those laws, rules and regulations made to protect the people in their enjoyment of the national banking system. In this class of offenses Congress has departed from its usual custom in criminal legislation, and does not permit the court to determine the measure of punishment according to its discretion, but for itself has declared that if men of the high character of those employed in the national banking system and their aiders and abettors shall violate the laws made to protect the public from wrong-doing by those engaged in the high and responsible trusts reposed in them, that they deserve and shall receive no less than five years' imprisonment. Without doubt, Congress feared that courts might yield to such influences as were improper and lightly punish reputable men for doing the forbidden acts by violating the important duties and trusts whose faithful performance Congress was determined to secure by these severe penalties. To neither court nor jury has been committed the power to condone these offenses by the imposition of light or trivial punishment, as is permitted in most other cases in Federal criminal procedure. The statute itself is a protest against allowing our judgments to be controlled by sympathy for fallen pride and shipwrecked lives. The court must caution you that while you are not expected to be without charity for the mistakes and misfortunes of men, nor without participation in the sympathy which all instinctively feel for the fallen and unfortunate, still in obedience to the oath which binds you, it is your duty to administer justice without respect to persons and to do equal right to the poor and to the rich alike, and a true verdict render and a true deliverance make between the Government and these defendants, according to the law and the evidence. This is the measure of your duty. If these defendants have been proven guilty, you must a true verdict render and so

declare; if they have not been proven guilty, you must likewise render a true verdict and make a true deliverance, and by your verdict say not guilty. That you will perform this duty fearlessly, honestly and impartially the court does not in the least doubt.

It is your duty to observe and follow the law as given you by the court. In the State courts in criminal causes the jury is made judges both of the law and the facts. Such, however, is not the rule in this court. Here the court pronounces the law, and it is your duty to accept and apply it to the case as given to you by the court. You are the sole judges of the facts and any statements of fact made by the court are not controlling upon you. If any such statements are made they are intended to invite your attention to the matters of fact which the court deems important, and not for the purpose of controlling your judgment.

The business of banking cannot be safely and successfully conducted except by the exercise of care, diligence and good faith. The funds entrusted to banks represent the scanty savings of the poor men and women of the country as well as the larger accumulations of the rich; and their preservation from loss by careless and improvident loans constitutes a trust of the most sacred character. No officer of a bank has any right to hazard the loss of such trust funds by making loans of them to parties of doubtful solvency, or upon doubtful securities. The acceptance by any officer of a bank of a bill of exchange or draft is an unlawful act unless it is drawn in good faith against actually existing values. No officer of a bank has any right to accept any bill, draft or other paper and give credit therefor on the books of the bank as a cash credit, unless such officer, at the time of its acceptance, honestly believes such bill, draft or paper to be the actual equivalent of a like amount of money. The security of business and the preservation of the people from loss and injury demand that there should be a vigorous enforcement of these salutary principles of good faith and honest dealing on the part of officers of the bank.

176 In order that you may the better understand the case, and apply the facts established by the proofs to the law governing it, it is proper that the court should give you a brief explanation or definition of the several offenses with which the defendants stand charged. They are charged with having aided and abetted one Theodore P. Haughey, the president of the Indianapolis National bank, in doing various acts and in the commission of various offenses in violation of section 5209 of the Revised Statutes of the United States. This section is as follows: "Section 5209. Every president, director, cashier, teller, clerk, or agent of any association (meaning national banking associations), who embezzles, abstracts or willfully misapplies any of the moneys, funds or credits of the association; or who, without authority from the directors, issues or puts in circulation any of the notes of the association; or who, without such authority, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment or decree; or who makes any false entry in any book, report or statement of the asso-

ciation, with intent, in either case, to injure or defraud the association or any other company, body politic or corporate, or any individual person, or to deceive any officer of the association, or any agent appointed to examine the affairs of any such association; and every person, who, with like intent, aids or abets any officer, clerk or agent in any violation of this section, shall be deemed guilty of a misdemeanor, and shall be imprisoned not less than five years nor more than ten."

It is unnecessary to notice or enumerate all the different acts which this section describes and makes criminal. It will be sufficient to direct your attention to those offenses in the commission of which the defendants stand charged with aiding and abetting. The indictment, which contains forty-six counts, charges the defendants with aiding and abetting in only two classes of the criminal acts enumerated and described in the statute. They are charged with aiding and abetting Theodore P. Haughey, president of the Indianapolis National bank, in the willful misapplication of the moneys, funds and credits of the Indianapolis National bank, with intent to convert the same to the use and benefit of the Indianapolis Cabinet Company; and also with aiding and abetting said Theodore P. Haughey as such president in making, or causing to be made, certain false entries in the books of the bank with intent to injure and defraud.

The first thirty-six counts in the indictment charge the defendants with unlawfully and knowingly aiding and abetting Theodore P. Haughey, president as aforesaid, in various offenses of willfully misapplying the moneys, funds and credits of the Indianapolis National bank for the use and benefit of the Indianapolis Cabinet Company. They charge, in substance, that one Theodore P. Haughey, as president of the Indianapolis National bank, who had been entrusted by its board of directors with the custody, control and management of the moneys, funds and credits of the bank, which bank had been duly organized under the national banking act, and was engaged in carrying on a banking business under and by virtue thereof, did, on the 1st day of January, 1891, and at various times, as set forth in the several counts above named, between that date and the 25th day of July, 1893, at the place and in the manner in said several counts stated, unlawfully and willfully misapply the moneys, funds and credits of said banking association without the authority of its board of directors, and with intent to convert the same to the use and benefit of the Indianapolis Cabinet Company: that such willful misapplications consisted in cashing, discounting and paying for the use and benefit of the Indianapolis Cabinet Company out of the moneys, funds and credits of said banking association a large number of worthless notes, drafts and bills of exchange, drawn by and upon various insolvent persons, firms, companies and corporations; and also in paying out of the moneys, funds and credits of said banking association a large number of checks drawn upon it by the Indianapolis Cabinet Company in favor of divers persons, firms and corporations when said cabinet company had no funds on deposit in said bank upon which to draw,

and when said cabinet company was known to be insolvent—all of which said moneys, funds and credits were so willfully misapplied by the said Theodore P. Haughey with intent to injure and defraud said banking association. And it is charged in substance in each of said counts, that Francis A. Coffin, Percival B. Coffin, and Albert S. Reed did unlawfully, knowingly and willfully, and with intent to injure and defraud said banking association, aid and abet the said Theodore P. Haughey to unlawfully and willfully misapply the moneys, funds and credits of said Indianapolis National bank, as charged in said several counts of the indictment. The counts from the seventeenth to the twenty-third inclusive, are general. Those from the seventeenth to the twenty-third inclusive, charge the willful misapplication of the moneys, funds and credits of the bank in the manner and by the means just stated to the extent of $375,000; and those from the twenty-fourth to the thirty-six- inclusive charge the willful misapplication of the moneys, funds and credits of the bank to the extent of $350,000 to and for the use and benefit of the Indianapolis Cabinet Company. The other counts of the indictment which relate to the willful misapplication of the moneys, funds and credits of the bank, sixteen in number, charge specific and particular acts of willful misapplication. They are too numerous to be analyzed and noticed in detail. Nor is this necessary, as you will have the indictment with you when you come to deliberate upon your verdict, and you can then examine the several counts in the indictment so far as you may find it necessary to do so.

177 The willful and criminal misapplication of the moneys, funds and credits of a national bank by its president, as defined in section 5209, does not include every wrongful or unlawful misapplication of such moneys, funds or credits. There are some unlawful misapplications of the moneys, funds and credits of a national bank which are not made criminal, and which are not included in the statute on which the present indictment is based. For example, the statute relating to national banks provides that the amount borrowed from such an association by any person, corporation or company, shall at no time exceed one-tenth of the capital stock of such association actually paid in; and that no such association shall make any loan or discount on the security of its own capital stock, or be the purchaser or holder of such shares, unless such security or purchase shall be necessary to prevent loss on a debt previously contracted, and that no such association shall purchase or hold real estate except for certain specified purposes. Now, if the directors of a national bank should permit an individual or company to borrow at one time a sum in excess of one-tenth of its capital stock actually paid in, or should purchase its own capital stock or real estate contrary to the provisions of the law, such acts and expenditures would be unlawful and unauthorized applications of the funds of such association. The remedies provided by the law for such wrongful expenditures or such unauthorized use of its funds by the direction of its board of directors, although made for the account and benefit of the bank, are a for-

feiture of all the rights, privileges and franchises of the association, and the personal liability of every director who participated in or assented to such use of the funds of the bank for all damages to the association, its shareholders or any other person may sustain in consequence of such unauthorized application.

The willful misapplication of the moneys, funds and credits of a national bank, which is made criminal by the above section of the statute, is a misapplication knowingly and willfully made by the officer charged, either for his own use and benefit or for the use and benefit of some person or company other than the banking association whose moneys, funds or credits are taken. To constitute the crime of willfully misapplying the moneys, funds or credits of a national bank, there must be a wrongful appropriation or conversion of the moneys, funds or credits of the bank by the party charged, in this case the president, either to his own use or to the use of some person or company other than the banking association, with intent to injure and defraud such association or some other person or company. In all the counts of the indictment relating to this offense the defendants are charged with unlawfully and knowingly aiding and abetting Theodore P. Haughey, the president of the Indianapolis National bank, in willfully misapplying the moneys, funds and credits of said bank without the authority of its board of directors, by converting the same to the use of the Indianapolis Cabinet Company, in the manner already stated, and with the intent to injure and defraud said bank. In order to constitute the offense of willful misapplication by Theodore P. Haughey, it is not necessary that he should have been previously in the actual possession of such moneys, funds or credits under or by virtue of any trust, duty or employment specially committed to him. The statute makes it a criminal offense for the president of a national bank to willfully misapply its assets. Such willful misapplication may be either for his own use or for the use and benefit of some company or person other than such banking association. It is not necessary to the commission of this offense that the officer of the bank who makes the willful misapplication should derive any personal benefit or advantage from the transaction. When the moneys, funds or credits of the bank are unlawfully taken from its possession and willfully misapplied by converting them to the use of any person or company other than the bank, with intent to injure and defraud, the offense described in the statute has been committed.

178 The criminal acts charged against Theodore P. Haughey may be done directly and personally by him, or they may be done indirectly through the agency of others. If Theodore P. Haughey had such control, direction and power of management by virtue of his relation to the bank as to direct an application of its funds in such manner and under such circumstances as to constitute the offense of willful misapplication, and he actually made such direction, or caused such misapplication to be made, he is equally guilty as if it was done by his own hand. If, therefore, it is shown by the proof, beyond a reasonable doubt, that Theodore

P. Haughey, as president of the Indianapolis National bank, did willfully misapply the moneys, funds or credits of the bank, as charged and described in the several counts of the indictment relating to that subject, by cashing, discounting and paying for the use and benefit of the Indianapolis Cabinet Company, out of the moneys, funds and credits of said bank a large number of worthless notes, drafts and bills of exchange, known by him to be worthless, drawn by and upon various insolvent persons, firms, companies and corporations, and by paying out of the moneys, funds and credits of the bank a large number of checks drawn upon it by the Indianapolis Cabinet Company in favor of divers persons, firms and corporations when said cabinet company had no funds on deposit against which to draw, and he cashed or caused such checks to be cashed for the use and benefit of said cabinet company without the authority of the board of directors of said bank, with the intent to injure and defraud said bank, then he would be guilty of the offense charged. And if the defendants, Francis A. Coffin, Percival B. Coffin and Albert S. Reed, are shown by the proofs beyond a reasonable doubt to have unlawfully and knowingly and with the like intent to injure and defraud said bank aided and abetted the said Haughey, knowing him to be the president of the bank, in unlawfully and willfully misapplying the moneys, funds and credits of said bank by converting the same to the use and benefit of the Indianapolis Cabinet Company, as charged in the several counts of the indictment relating to that subject, then they are guilty of the offense charged against them. The particular acts of misapplication described in the several specific counts must be established by the proofs as therein respectively charged, if, however, there are any willful misapplications shown by the evidence which are not covered by the special and specific counts, they may be included under the general counts and a verdict rendered thereon accordingly. On the counts for willful misapplication the questions for you to determine are: Did Theodore P. Haughey, as president of the Indianapolis National bank, unlawfully and knowingly and with intent to injure and defraud said bank as charged and described in the several counts of the indictment relating to that subject, willfully misapply the moneys, funds and credits of said bank by cashing, discounting and paying for the use and benefit of the said Indianapolis Cabinet Company, out of the moneys, funds and credits of the bank, without authority from its board of directors, any notes, drafts or bills of exchange drawn by and upon insolvent persons, firms and companies, knowing such notes, drafts or bills of exchange to be worthless? If he did, he has committed the offense of willful misapplication as charged and described in the several counts of the indictment relating to that subject, which have been established by the proofs. Did Theodore P. Haughey, as president of the Indianapolis National bank, and with intent to injure and defraud said bank, as charged and described in the several counts of the indictment relating to that subject, unlawfully and willfully misapply the moneys, funds and credits of said bank by cashing or paying, or causing to be cashed or paid, checks drawn upon it by

the Indianapolis Cabinet Company in favor of various persons, firms or companies, when said cabinet company had no funds or credits on deposit against which to draw, and without authority from its board of directors? If he did, he has committed the offense of willful misapplication as charged and described in the several counts of the indictment relating to that subject which have been established by the proofs. Did Francis A. Coffin, Percival B. Coffin and Albert S. Reed, unlawfully and knowingly, and with the like intent to injure and defraud said bank, aid and abet said Haughey, knowing him to be the president of said bank, in unlawfully and willfully misapplying the moneys, funds and credits of said bank as charged and described in the several counts of the indictment relating to that subject, which have been established by the proofs? If they did, they have committed the offense of aiding or abetting in the willful misapplication of the moneys, funds and credits of said bank as described and charged in the several counts of the indictment relating to that subject which have been proved.

179 If the Government, as to any count or counts of the indictments, has failed to prove the allegations therein contained to your satisfaction beyond a reasonable doubt, it will be your duty to find the defendants not guilty as to such count or counts. If, however, you are satisfied beyond a reasonable doubt that Theodore P. Haughey is guilty of the willful misapplication of the moneys, funds and credits of the Indianapolis National bank, with intent to injure and defraud said bank, as charged in the count or counts of the indictment relating to that subject, and that the defendants, unlawfully and knowingly, and with the like intent aided and abetted said Haughey in such willful misapplication as charged in such count or counts, then you ought to find the defendants guilty as they stand charged in such count or counts of the indictment. You may find the defendants guilty upon all of the counts of the indictment if you are satisfied beyond a reasonable doubt that the proofs justify it; or you may find the defendants guilty upon one or more of the counts of the indictment and not guilty upon the others. You may find all the defendants guilty or not guilty; or you may find some of them guilty and others not guilty. Before you can find any one of the defendants guilty, you must be satisfied of his guilt as charged in some one of the counts of the indictment, beyond a reasonable doubt. In order to make the defendants liable as aiders and abetters as charged in the indictment, it is necessary, that they should be proved to have done or said something showing their consent to and participation in the unlawful and criminal purpose of Theodore P. Haughey, and contributing to its execution.

We come now to the offense of aiding and abetting in making, or causing to be made, false entries in the books of the bank. The counts of said indictment, from the thirty-seventh to the forty-sixth, inclusive, charge the defendants with aiding and abetting Theodore P. Haughey in making certain false entries in certain books of the bank. The thirty-seventh count charges, in substance, that Theodore P. Haughey, being the president of the Indianapolis National

bank, which had been organized and was carrying on a banking business under and by virtue of the national banking act, with intent to injure and defraud said bank, did, on the 30th day of March, 1892, unlawfully, knowingly and willfully make and cause to be made in a certain book of the bank, under the account of the Indianapolis Cabinet Company, and in the credit column, a certain false entry, to wit: $20,480.76, which entry purported to show, and did indicate and declare, that the Indianapolis Cabinet Company had on said day deposited in said bank moneys, funds and credits in the sum of $20,480.76, and was entitled to credit therefor upon the books of the bank; that said entry was false, as said Haughey well knew, because said cabinet company had not on said day deposited said sum with said bank and was not entitled to credit therefor in said book of said bank, but was entitled to credit for a less sum, to wit: $17,480.76, more or less, the exact amount being unknown to the grand jury. And the defendants are charged with unlawfully aiding and abetting said Haughey with like intent, in making such false entry. The thirty-eighth count relates to the same false entry as charged and described in the thirty-seventh count, and differs from it in no material particular except in charging that the false entry was made with intent to deceive any agent appointed, or to be appointed by the Controller of the Currency to examine the affairs of the bank. And the defendants are charged with aiding and abetting said Haughey with like intent in making said false entry. The thirty-ninth count differs from the thirty-eighth in no important particular, except in charging that a false entry was made in a certain book of the bank on May 9, 1893, purporting to show a deposit in said bank to the credit of the Indianapolis Cabinet Company of $44,000, when said cabinet company had not on said day deposited said sum or any part thereof, with intent to deceive any agent appointed or to be appointed by the Controller of the Currency to examine the affairs of said bank. And
180 the defendants are charged with aiding and abetting said Haughey with like intent in making said false entry. The fortieth count differs from the thirty-ninth only in charging the false entry to have been made with intent to injure and defraud said bank. The forty-first count charges a false entry in a book of the bank, purporting to show a deposit to the credit of the Indianapolis Cabinet Company to have been made in said bank on the sixth day of January, 1893, of the sum of $23,069.04, when said sum was not, nor was any part thereof deposited in said bank on said day, with intent to injure and defraud the bank. And the defendants are charged with aiding and abetting said Haughey with like intent in making said false entry. The forty-second count relates to the same false entry described in the forty-first count, and differs from it only in charging the intent to have been to deceive an agent appointed or to be appointed by the Controller of the Currency to examine the affairs of the bank. The forty-third count charges a false entry in a book of the bank purporting to show a deposit to the credit of the Indianapolis Cabinet Company to have been made in said bank on the 5th day of January, 1893, of the sum of

$2,723.10, when said sum was not, nor was any part thereof, deposited in said bank on said day, with intent to injure and defraud said bank. And the defendants are charged with aiding and abetting said Haughey with like intent in making said false entry. The forty-fourth count differs from the forty-third count only in charging the false entry to have been made with intent to deceive the agent appointed, or to be appointed, by the Controller of the Currency to examine the affairs of said bank. The forty-fifth count charges a false entry in a book of the bank purporting to show a deposit of $13,273.09 to have been made in said bank on the 17th day of September, 1892, to the credit of the Indianapolis Cabinet Company, when in truth the said cabinet company was entitled to credit for a less sum, that is to say, for the sum of $9,000 more or less, the exact sum being unknown to the grand jurors, with intent to injure and defraud said bank. And the defendants are charged with aiding and abetting said Haughey with like intent in making said false entry. The forty-sixth count relates to the same false entry described in the forty-fifth count, and differs from it only in charging the intent to have been to deceive any agent appointed or to be appointed by the Controller of the Currency to examine the affairs of said bank.

The charges touching the subject of false entries in the books of the bank will need but little explanation. Any entry on the books of the bank which is knowingly and purposely made to represent what is not true or does not exist, with intent either to deceive the officers of the bank or to defraud the association, or to deceive any officer appointed to examine the affairs of the association, is a false entry within the meaning of the statute making it a criminal offense. It may be done personally or by direction. If the false entry is calculated to deceive or defraud, the making or causing it to be made in the books of the bank with the intent to deceive or defraud is all that is necessary to bring the act within the meaning of the statute making it a criminal offense. The circumstance that the attempt to deceive was not done in an adroit or skillful manner does not relieve the act of its criminal character; nor will the fact that the falsity of the entry could be easily detected or exposed by inquiry, or by the examination of other books or papers render such false entry any the less criminal if made with intent to deceive or defraud. In order to prove Theodore P. Haughey guilty of making false entries in the books of the bank it is not necessary to show that the false entries were made by his own hand or in his presence; if the proof establishes to your satisfaction that the entries are in fact false in the particulars charged, and that they were made by some clerk or book-keeper under or in pursuance of the direction of Theodore P. Haughey for the purpose of fraud or deceit, that will be sufficient to make the act or acts his own, and to constitute the offense described in the statute. If an entry was made in the books of the bank showing that a certain sum of money had been deposited in the bank to the credit of some person or corporation when in truth and in fact no such deposit had been made and no such credit actually existed, such entry, if made with intent to de-

ceive or defraud, would constitute a false entry. So, if commercial paper known to be valueless was knowingly and purposely received and accepted by said Haughey, as president of the bank, without authority from its board of directors, as solvent commercial paper, he knowing it to be valueless, and the person or company so negotiating such paper should by his direction be given a cash credit on the books of the bank for the face amount of such valueless paper, with intent to deceive or defraud, such an entry of credit would constitute a false entry.

181 If the president of a national bank in the honest exercise of official discretion, in good faith and without fraud makes loans or discounts for the actual or supposed advantage of the bank, there is no criminal liability, although the transaction may be injudicious and unsafe, and actually result in loss or damage to the bank. But if such loans or discounts are made in bad faith, for the purpose of gain or advantage to some other person or company, and not therefore in the honest exercise of official discretion, the officer making them passes the line dividing honesty and dishonesty, and his action is criminal, and punishable under the statute if done with intent to injure or defraud the banking association. Theodore P. Haughey, between the meetings of the board of directors had authority, by virtue of his official position as president of the bank and by virtue of the authority given him by the board of directors, to make *bona fide* loans of the bank's funds, and to make discounts of paper offered to the bank for discount, and he had authority to have the amounts of such loans or discounts placed to the credit of the borrower. But this authority to make, direct or sanction loans and discounts extended only lo legitimate transactions, honestly intended for the benefit of the bank. Loans or discounts made on credits given in bad faith for the purpose of defrauding the bank, or to enable him to convert the moneys, funds or credits of the bank to the use and benefit of another, would be an unlawful and criminal exercise of authority. The form of a loan or the giving of credit upon the books of the bank may be adopted as a cover and pretense to conceal a fraudulent transaction; and when resorted to for that purpose, and the moneys, funds or credits of the bank are withdrawn by such means and converted to the use of another person or company whereby injury results to the bank, he is guilty of a criminal act. A false and fictitious credit given to any one on the books of the bank is, in judgment of law, no credit at all. It confers no rights in favor of the party to whom it is given, nor does it impose any obligations on the bank. The form which such a transaction may take, the methods adopted to reach the fraudulent ends, or the instrumentalities employed, whether consisting of one act, or a succession of acts, to accomplish the fraudulent purpose, in no way changes or alters the character of the act. The law looks through all forms, devices or contrivances to the results. No form of paper, and no system of book-keeping, however cunningly devised, can sanctify fraud or give it validity. If, therefore, fictitious or fraudulent credits were given upon the books of the bank to the Indianapolis Cabinet Company, it thereby

acquired no right to the funds of the bank represented by such credits. A credit upon the books of the bank to be valid and create a relation of creditor and debtor between the Indianapolis Cabinet Company and the bank, must represent value received by the bank in the shape of money, or what is honestly deemed to be the equivalent of money. It must represent a *bona fide* indebtedness of the bank. Such a credit on the books of the bank obtained by the unauthorized acceptance of valueless paper, or by credits fraudulently given, without some valid consideration passing to the bank at the time, is no credit in a legal sense, and when the funds of the bank are drawn out upon such credits they are wrongfully obtained.

Therefore, if the Indianapolis Cabinet Company obtained credit upon the books of the bank by making and negotiating to it notes, drafts or other paper which Haughey and the defendants knew did not represent actual values, with intent to defraud the bank, such credits gave the cabinet company no right to moneys represented by such credits. Before you can find Theodore P. Haughey guilty, as charged in the indictment, of the willful misapplication of the moneys, funds and credits of the bank, or of making or causing to be made false entries in the books of the bank, you must be satisfied that such willful misapplication and such false entries were made, as charged, with intent to injure and defraud the bank, or some officer or person, as alleged in the indictment; and before you can find the defendants guilty, you must be satisfied that they unlawfully and knowingly, with like intent, aided and abetted the said Haughey in making, or causing to be made, such willful misapplications, and in making, or in causing to be made, such false entries.

If you should find from the evidence that articles of association were from time to time filed by the defendants in accordance with the statutes of the State of Indiana for the creation of corporations within such State under the statute of the State providing for the incorporation of manufacturing companies, then as matter of law such corporations were thereby created, even though you should find that nothing was paid into the treasury of such corporation as capital stock, and on such facts such corporation would not be a fictitious person. But if such corporations were organized by the defendants, not for the purposes of legitimate business, but as mere instrumentalities for the criminal purpose of wrongfully and unlawfully obtaining money from the Indianapolis National bank for the use and benefit of the Indianapolis Cabinet Company, then the fact that such corporations were organized with legal formality will not aid the defendants.

182 By the statute of limitations, the defendants cannot be convicted for any of the offenses charged, unless the same are shown to have been committed within three years next preceding the time of the finding and return of the indictment, which was on the 21st day of December, 1893.

Every person is presumed to intend the natural and ordinary consequence of his own acts. Hence, if the natural and ordinary

consequences of the acts of Haughey and the defendants, as shown by the evidence, were to injure and defraud the bank, or to deceive and defraud any officer of the bank, you will be authorized to find that such was their intent, even though they may have been injured thereby. I do not wish to be understood as meaning that the intent to injure, deceive or defraud is conclusively established by the simple proof of the doing of the prohibited acts which result in injury. What I do mean is this: that when the prohibited acts are knowingly and intentionally done and their natural and legitimate consequences are to produce injury to the bank or to benefit the wrong-doer, the intent to injure, deceive, or defraud is thereby sufficiently established to cast on the accused the burden of showing that their purpose was lawful and their acts legitimate.

The indictment contains charges that divers persons, firms and corporations were insolvent. In a commercial sense a person or corporation is said to be insolvent who is not able to pay, in the ordinary course of business, the obligations which his creditors may enforce by recourse to legal measures, even though his estate when wound up may prove sufficient to pay all his debts. In a larger and more usual sense a person is said to be insolvent whose estate, when wound up, is not sufficient to pay his debts in full. In this case if you are satisfied that the Indianapolis Cabinet Company, or any other person, firm or corporation alleged to have been insolvent at the time charged had not sufficient property and assets to pay its debts in full if wound up, then such person, firm or corporation was insolvent.

Evidence has been introduced in regard to the value of the plant and other property of the Indianapolis Cabinet Company during the time covered by the indictment. This value is to be measured, not by what the property would bring at a forced sale, nor at a fancy price which might be placed upon it by the owner not wishing to sell. The true criterion is its market value, and the market value of property is the price which it will bring when it is offered for sale by one who desires, but who is not obliged to sell, and is bought by one who is under no necessity of having it. In estimating its value, all the capabilities of the property and all the uses to which it may be applied are to be considered. Tested by these principles would the plant and other property of the Indianapolis Cabinet Company have sold for enough to have paid its debts in full? If not, the Indianapolis Cabinet Company was insolvent.

To justify you in returning a verdict of guilty, the evidence must be of such a character as to satisfy your judgment to the exclusion of every reasonable doubt. If, therefore, you can reconcile the evidence with any reasonable hypothesis consistent with the defendants' innocence, it is your duty to do so, and in that case find the defendants not guilty. And if, after weighing all the proofs and looking only to the proofs, you impartially and honestly entertain the belief that the defendants may be innocent of the offenses charged against them, they are entitled to the benefit of that doubt and you should acquit them. It is not meant by this that the proof should establish their guilt to an absolute certainty, but merely that

you should not convict unless, from all the evidence, you believe the defendants are guilty beyond a reasonable doubt. Speculative notions or possibilities resting upon mere conjecture, not arising or deducible from the proof, or the want of it, should not be confounded with a reasonable doubt. A doubt suggested by the ingenuity of counsel, or by your own ingenuity, not legitimately warranted by the evidence or the want of it, or one born of a merciful inclination to permit the defendants to escape the penalty of the law, or one prompted by sympathy for them or those connected with them, is not what is meant by a reasonable doubt. A reasonable doubt, as that term is employed in the administration of the criminal law, is an honest, substantial misgiving, generated by the proof or the want of it. It is such a state of the proof as fails to convince your judgment and conscience and satisfy your reason of the guilt of the accused. If the whole evidence, when carefully examined, weighed, compared and considered, produces in your minds a settled conviction or belief of the defendants' guilt—such an abiding conviction as you would be willing to act upon in the most weighty and important affairs of your own life—you may be said to be free from any reasonable doubt, and should find a verdict in accordance with that conviction or belief.

183 You are the judges of the weight and credit to be given to the testimony of the witnesses. You ought fairly and impartially to consider and weigh all the testimony given in the case. In determining the weight and credibility of the testimony of any witness you have a right to consider his bias or prejudice, if any is shown, his interest in the result of the cause, his intelligence and candor and the knowledge which he is shown to possess touching the matters about which he testifies.

The indisputable evidence shows that the offenses charged in the indictment, if committed at all, were committed in the State of Indiana and within the jurisdiction of the court. It is undisputed that Theodore P. Haughey was, during the period of time covered by the indictment, the president of the Indianapolis National bank; that said bank was a national bank, duly organized under the national banking laws, and was engaged in the business of banking during the period of time covered by the indictment, and that it had an authorized capital stock actually paid in of $300,000. It is also shown that Theodore P. Haughey, as such president, had the entire custody, control and management of the affairs of the bank and that the directors of the bank gave him no authority to do or commit the various alleged criminal acts charged against him in the indictment. It is further proved that large sums of money were obtained from the bank by the Indianapolis Cabinet Company by means of notes, drafts and bills of exchange which are now wholly or partially valueless. It is also shown that various sums of money were obtained from the bank by means of checks drawn upon it by the Indianapolis Cabinet Company which were presented to and cashed by the bank out of its moneys and funds when said cabinet company had no funds on deposit with which to pay such checks. The evidence shows that the defendants organized a number of cor-

porations, ostensibly for the conduct of business in this city, in Richmond, Ind., and in the cities of Boston, New York, and London, England. These corporations seem to have had little substantial capital and to have been used as mere instrumentalities for furthering the purposes of the defendants as the corporators and owners of the Indianapolis Cabinet Company. It will be for you to determine whether they were organized and conducted as legitimate corporations, or whether they were intended to be used as instrumentalities to more successfully obtain moneys, funds and credits from the Indianapolis National bank. It is claimed by the Government that these corporations were merely colorable, nothing more than names, and were organized as devices to enable the defendants to obtain money from the bank for the use of the cabinet company. It is claimed that these corporations had little or no assets; that they were insolvent at all times, and that paper drawn or accepted by them was valueless. It is also claimed that Haughey and these defendants knew their financial condition, and that paper drawn or accepted by them did not represent existing values.

Carefully weigh all the evidence in the case, and from it, under the rules of law which I have given you, determine the guilt or innocence of the defendants. When you retire to deliberate on your verdict, select one of your number to act as your foreman. When you have agreed upon a verdict, let your foreman sign it and then return it into open court. Forms of verdict will be furnished for your use.

And now, gentlemen of the jury, thanking you for the patience and attention that you have bestowed upon this case, the court leaves the determination of it in your hands.

184 And thereupon, before the retirement of the jury, the defendants and each of them did except in the manner hereinafter stated to the giving of each of the parts of said instructions so given hereinafter set forth, and were allowed 120 days in which to file their bill of exceptions, such parts of instruction so excepted to and such reasons, so far as then written, being in the words and figures as hereinafter set out:

185 Be it further remembered that thereupon, before the retirement of the jury, the following proceedings were had and statements made by the court and counsel for defendants, to wit:

The COURT: Gentlemen of the jury, the bailiff will have you in charge and at supper time you will be permitted to separate, bearing in mind the very great importance of saying nothing during your separation to anybody about the state of your deliberations or to mention anything touching the case and allow nobody to speak to you about the case. Keep your minds free, unembarrassed from any outside influence, and when you are through with your supper return to your room for further deliberation unless you shall have agreed upon a verdict. I will have you brought in, if you shall have not agreed by that time, in court at nine o'clock this evening for the purpose of giving further directions at that time. If it is the desire of the counsel for the defendants or for the Government to reserve any

exceptions to the charges given or refused the practice in this court requires that that should be done before the jury retires.

Mr. MILLER: It is, of course, if your honor please, desired on behalf of the defendants to reserve exceptions to the refusal of such instructions as were requested and refused and to parts of the instructions given. Without having a little time to examine those instructions it is impossible for us now to designate the par-
186 ticular parts. We would like to have time to look at them for that purpose.

The COURT: What length of time would you desire?

Mr. MILLER: I do not know, if your honor please, how long it would take. It has taken an hour to read them.

Mr. DUNCAN: They can be made when made, as of this time, with permission of the court.

The COURT: Except in so far as any mere verbal changes are concerned, which, if the court's attention was drawn to, it would at once correct, I have no objection to that method of procedure.

Mr. MILLER: Of course, anything that is formal, of that character that don't go to the substance of the matter, we should not expect to insist on; but, as your honor can see, it is simply impossible for us from hearing the instructions read for an hour to select the parts.

The COURT: There are the instructions you prepared (indicating), and these instructions I do not care to have mislaid or lost (indicating).

Mr. MILLER: No, sir; of course not. For that matter, every syllable of them has been taken down by two stenographers here, all your instructions as you read them, so that there can't be any possibility of any trouble about them. We will take them and make——

The COURT: Where is the bailiff? Mr. Taylor, you may take these forms of verdict and the indictment. Gentlemen of the jury, you may now retire with your bailiff.

That during said proceedings and the making of such
187 statements the assistant district attorney was present (the district attorney being absent from the court-room at the time), heard said conversation, and assented to said arrangement; that thereupon the jury retired at a few minutes after three o'clock p. m., in charge of the bailiff, to consider of their verdict; whereupon, by permission of the court, the attorneys for defendants took said instructions so given by the court, which were typewritten, to their office and noted thereon, by enclosing the same in parentheses marked with pencil, the parts of such instructions given by the court to which exceptions were taken, said parts respectively being numbered, which parts so excepted to and numbered are hereinafter set forth.

That at nine o'clock p. m. of the same day counsel for defendants returned to the court-room, bringing said instructions given by the court so marked as aforesaid, and handed them to the judge in open court, saying that the parts of the instructions marked in

parentheses and numbered were the parts to which the defendants excepted; that immediately thereafter the jury was brought in and the court, having inquired whether they had agreed upon a verdict and being answered in the negative, thereupon informed them that he would be about, within call, until eleven o'clock p. m. to receive a verdict if they agreed before that time; that otherwise they might seal their verdict and bring the same into court at nine
188 o'clock on Monday morning, it being then Saturday evening; that thereupon the jury again retired, and, not having agreed prior to eleven o'clock, continued their deliberations until about nine o'clock on Sunday morning, when, having agreed, they prepared their verdict, sealed the same, and delivered it to their foreman, and, separating, again assembled at nine o'clock on Monday morning in court and delivered their verdict as otherwise set out in the record, and thereupon the court granted the defendants 120 days in which to file their bill of exceptions.

That afterwards, to wit, on the same day, May 28th, 1894, the defendants had the parts of said instructions given by the court so excepted to written out in full and at the end of each assigned in part the grounds of their objections thereto, said parts of instructions, with the exceptions so formally noted in writing, being, on May 28th, 1894, by leave of court, filed as of May 26th, 1894, and the same being in the words and figures following, to wit:

189 District Court of the United States, District of Indiana.

THE UNITED STATES
vs.
FRANCIS A. COFFIN, PERCIVAL B. COFFIN, and ALBERT S. REED. } No. 4926. Exceptions.

The defendants and each of them object and except to each of the following portions of the instructions given by the court to the jury in this case for reasons stated at the end of each of said portions of said instructions so excepted to, as well as for other reasons not so stated:

1st. "In this class of offences Congress has departed from its usual custom in criminal legislation, and does not permit the court to determine the measure of punishment according to its discretion, but for itself has declared that if men of the high character of those employed in the national banking system and their aiders and abettors shall violate the laws made to protect the public from wrong-doing by those engaged in the high and responsible trusts reposed in them that they deserve and shall receive no less than five years' imprisonment. Without doubt Congress feared that courts might yield to such influences as were improper and lightly punish reputable men for doing the forbidden acts by violating the important duties and trusts whose faithful performance Con-
190 gress was determined to secure by these severe penalties. To neither court nor jury has been committed the power to

condone these offences by the imposition of light or trivial punishment, as is permitted in most other cases in Federal criminal procedure. The statute itself is a protest against allowing our judgments to be controlled by sympathy for fallen pride and shipwrecked lives."

As to the first exception, the court erred in stating that, as a rule, the fixing of the punishment is left by Congress to the courts; 2nd, that the statute is a protest against allowing the judgment of a court or jury to be controlled by sympathy for fallen pride and shipwrecked lives; 3d, that Congress feared that the courts might yield to improper influences, and therefore fixed the punishment.

2nd. "The funds entrusted to banks represent the scanty savings of the poor men and women, as well as the larger accumulations of the rich, and their preservation from loss by careless and improvident loans constitutes a trust of the most sacred character. No officer of a bank has any right to hazard the loss of such trust funds by making loans of them to parties of doubtful solvency or upon doubtful securities. The acceptance by any officer of a bill of exchange or draft is an unlawful act unless it is drawn in good faith against actually existing values. No officer of a bank has any right to accept any bill, draft, or other paper and give credit therefor on the books of the bank as a cash credit unless such officer at the time of its acceptance honestly believes such bill, draft, or paper to be the actual equivalent of a like amount of money. The security of business and the preservation of the people from loss and injury demand that there should be a vigorous enforcement of these salutary principles of good faith and honest dealing on the part of officers of the bank."

As to the 2nd exception, the court erred in stating that the funds entrusted to banks represent the scanty savings of poor men and women, as well as larger accumulations of the rich; 2nd, in stating that funds deposited in a bank are trust funds; 3d, that
191 & 192 an officer of a bank has no right to loan funds to persons of doubtful solvency; 4th, that the acceptance by an officer of a bank of a bill of exchange or draft not drawn against actual values is unlawful; 5th, that no officer of a bank has a right to accept any bill, draft, or other paper and give credit therefor as a cash credit unless such officer at the time honestly believes such paper to be the actual equivalent of a like amount of money.

193 8th. "If, therefore, it is shown by the proof beyond a reasonable doubt that Theodore P. Haughey, as president of the Indianapolis National bank, did wilfully misapply the moneys, funds, or credits of the bank, as charged and described in the several counts of the indictment relating to that subject, by cashing, discounting, and paying for the use and benefit of the Indianapolis Cabinet Company out of the moneys, funds, and credits of said bank a large number of worthless notes, drafts, and bills of exchange, known by him to be worthless, drawn by and upon various insolvent persons, firms, companies, and corporations, and by paying out of the moneys, funds, and credits of the bank a large number of checks drawn upon it by the Indianapolis Cabinet Company in favor of divers persons,

firms, and corporations when said cabinet company had no funds on deposit against which to draw, and he cashed or caused such checks to be cashed for the use and benefit of said cabinet company without the authority of the board of directors of said bank, with the intent to injure and defraud said bank, then he would be guilty of the offense charged."

As to the 8th exception, the part of the instruction there excepted to is erroneous because, 1st, it tells the jury that they may convict without reference to any proof of the averment of insolvency of the cabinet company or knowledge thereof on the part of said Haughey; 2nd, it directs the jury that said Haughey would be guilty of criminal misapplication, as charged in the indictment, as to each count relating to such misapplication if proof is made that Mr. Haughey discounted, cashed, or paid for the use of the Indianapolis Cabinet Company out of the funds of the bank a large number of checks drawn upon it by the Indianapolis Cabinet Company in favor of divers persons, &c., whether there is proof of the specific charges alleged in the specific counts or not.

9th. "And if the defendants, Francis A. Coffin, Percival B. Coffin, and Albert S. Reed, are shown by the proofs beyond a reasonable doubt to have unlawfully and knowingly and with the like intent to injure and defraud said bank aided and abetted the said Haughey, knowing him to be the president of the bank, in unlawfully
194 and wilfully misapplying the moneys, funds, and credits of said bank by converting the same to the use and benefit of the Indianapolis Cabinet Company, as charged in the several counts of the indictment relating to that subject, then they are guilty of the offense charged against them."

As to the 9th exception, this part of the instruction is erroneous for the same reason as was given with reference to the 8th exception.

10th. "If, however, there are any wilful misapplications shown by the evidence which are not covered by the special and specific counts they may be included under the general counts and a verdict rendered thereon accordingly."

As to the 10th exception, the court erred in charging that any wilful misapplication shown by the evidence not covered by the special and specific counts may be included under the general counts and a verdict rendered thereon accordingly.

11th. "On the counts for wilful misapplication the questions for you to determine are, did Theodore P. Haughey, as president of the Indianapolis National bank, unlawfully and knowingly and with intent to injure and defraud said bank, as charged and described in the several counts of the indictment relating to that subject, wilfully misapply the moneys, funds, and credits of said bank by cashing, discounting, and paying for the use and benefit of the said Indianapolis Cabinet Company out of the moneys, funds, and credits of the bank, without authority from its board of directors, any notes, drafts, or bills of exchange drawn by and upon insolvent persons, firms, and companies, knowing such notes, drafts, or bills of exchange to be worthless? If he did he has committed the offense of wilful

misapplication, as charged and described in the several counts of the indictment relating to that subject which have been established by the proofs."

As to the 11th exception, this part of the instruction is erroneous, because, 1st, it disregards the question of insolvency
195 of the Indianapolis Cabinet Company averred in most of the counts of the indictment; 2nd, it disregards the question of Haughey's knowledge of such insolvency; 3d, it tells the jury that if Haughey discounted or paid any notes, drafts, or bills of exchange drawn by and upon insolvent persons, &c., knowing such notes, drafts, &c., to be worthless, then he has committed the offense of wilful misapplication, as charged in all the counts relating to that subject.

12th. "Did Theodore P. Haughey as president of the Indianapolis National bank and with intent to injure and defraud said bank, as charged and described in the several counts of the indictment relating to that subject, unlawfully and wilfully misapply the moneys, funds, and credits of said bank by cashing or paying or causing to be cashed or paid checks drawn upon it by the Indianapolis Cabinet Company in favor of various persons, firms, or companies when said cabinet company had no funds or credits on deposit against which to draw and without authority from its board of directors? If he did he has committed the offences of wilful misapplication, as charged and described in the several counts of the indictment relating to that subject which have been established by the proofs."

This part of the instruction is erroneous, 1st, because it disregards the question of the insolvency of the Indianapolis Cabinet Company, as alleged in the indictment; 2nd, it disregards Haughey's knowledge of such insolvency; 3d, it informs the jury that Haughey has committed a crime charged in the various counts of the indictment if he has paid or cashed any checks drawn by the Indianapolis Cabinet Company in favor of any persons having any funds without reference to the specific charges in various counts of the indictment; 4th, because it assumes that an overdraft, if permitted with intent on the part of the president to injure the bank, would be a wilful misapplication of the funds of the bank without reference to whether the bank was in fact defrauded or injured by such overdraft.

13th. "Did Francis A. Coffin, Percival B. Coffin, and Albert S. Reed unlawfully and knowingly and with the like intent to injure and defraud said bank aid and abet said Haughey, knowing him to be the president of said bank, in unlawfully and wilfully misapplying the moneys, funds, and credits of said bank as charged
196 and described in the several counts of the indictment relating to that subject which have been established by the proofs? If they did they have committed the offense of aiding and abetting in the wilful misapplication of the moneys, funds, and credits of said bank as described and charged in the several counts of the indictment relating to that subject which have been proved."

The part of the instruction covered by the 13th exception is erroneous for the same reasons as stated with reference to the 12th.

14th. "If, however, you are satisfied beyond a reasonable doubt that Theodore P. Haughey is guilty of the wilful misapplication of the moneys, funds, and credits of the Indianapolis National bank with intent to injure and defraud said bank, as charged in the count or counts of the indictment relating to that subject, and that the defendants unlawfully and knowingly and with like intent aided and abetted said Haughey in such wilful misapplication as charged in such count or counts, then you ought to find the defendants guilty as they stand charged in such count or counts of the indictment."

The part of the instruction covered by this exception is erroneous in that it directs the jury if the facts alleged in any count of the indictment are proven that they shall find a verdict of guilty as to such count without regard to whether such count states a crime under the statute or not. It is also erroneous for the same reason as stated with reference to the 13th exception.

15th. "You may find the defendants guilty upon all the counts of the indictment if you are satisfied beyond a reasonable doubt that the proofs justify you."

The part of the charge excepted to in the 15th exception is bad for the same reason as stated with reference to the 14th.

197 17th. "So if commercial paper known to be worthless was knowingly and purposely received and accepted by said Haughey as president of the bank without authority from its board of directors as solvent commercial paper, he knowing it to be valueless, and the person or company so negotiating such paper should, by his direction, be given a cash credit on the books of the bank for the face amount of such valueless paper with intent to deceive or defraud, such an entry or credit would constitute a false entry."

The part of the instruction covered by the 17th exception is erroneous because it assumes that a grant of special authority from the board of directors was necessary to authorize the president to act in the matter referred to in said instruction.

18th. "A credit upon the books of the bank to be valid and create the relation of creditor and debtor between the Indianapolis Cabinet Company and the bank must represent value received by the bank in the shape of money, or what is honestly deemed to be the equivalent of money. It must represent a *bona fide* indebtedness of the bank."

The part of the instruction covered by the 18th exception is erroneous as giving a false definition of the word "credit."

19th. "Such a credit on the books of the bank obtained by the unauthorized acceptance of valueless paper or by credits fraudulently given without some valid consideration passing to the bank at the time is no credit in a legal sense, and when the funds of the bank are drawn out upon such credits they are wrongfully obtained."

The part of the instruction covered by the 19th exception is erroneous because it assumes that some consideration must pass at the time in order to entitle a party to credit on the books of the bank.

20th. "Therefore, if the Indianapolis Cabinet Company
198 obtained credit upon the books of the bank by making and negotiating to it notes, drafts, or other paper, which Haughey and the defendants knew did not represent actual values, with intent to defraud the bank, such credits gave the cabinet company no right to the money represented by such credits."

The part of the instruction covered by the 20th section is erroneous, in that it assumes that the cabinet company could obtain legitimate credit upon the books of the bank only by the deposit of cash or paper representing actual values, disregarding accommodation paper.

21st. "Hence, if the natural and ordinary consequences of the acts of Haughey and the defendants, as shown by the evidence, were to injure and defraud the bank or to deceive and defraud any officer of the bank, you will be authorized to find that such was their intent even though they may have been injured thereby."

The part of the instruction covered by the 21st exception is erroneous, in that it assumes that the acts of Haughey and of the defendants were one and the same or that they were of such character as that the same intent was inferable from both.

22nd. "I do not wish to be understood as meaning that the intent to injure, deceive, or defraud is conclusively established by the simple proof of the doing of the prohibited acts which result in injury. What I do mean is this, that when the prohibited acts are knowingly and intentionally done and their natural and legitimate consequences are to produce injury to the bank or to benefit the wrong-doer, the intent to injure, deceive, or defraud is thereby sufficiently established to cast on the accused the burden of showing that their purpose was lawful and their acts legitimate."

The part of the instruction covered by the 22nd exception is bad for the same reason as that covered by the 21st, and also because it assumes that the burden of proof shifts at any time during the trial from the Government to the defendants.

199 The foregoing exception to that part of the charge numbered 22nd is disallowed because the court at the proper time stated to counsel that as to such verbal changes in its instructions as the court would make if its attention were called to them no exception would be allowed after the retirement of the jury; and if the attention of the court had been called to the objection now taken the court would have made such change as would have obviated said objection before the retirement of the jury, which was not done.

200 23d. "In this case, if you are not satisfied that the Indianapolis Cabinet Company, or any other person, firm, or corporation alleged to have been insolvent at the time charged had not sufficient property and assets to pay its debts in full if wound up, then such person, firm, or corporation was insolvent."

The part of the instruction covered by this exception is erroneous, in that it disregards the manner of the winding up, and all consideration of the circumstances and conditions surrounding the business of the country at the time.

24th. "If, therefore, you can reconcile the evidence with any reasonable hypothesis consistent with the defendants' innocence, it is your duty to do so, and in that case find the defendants not guilty; and if, after weighing all the proofs and looking only to the proofs, you impartially and honestly entertain the belief that the defendants may be innocent of the offences charged against them, they are entitled to the benefit of that doubt and you should acquit them."

The part of the instruction covered by the 24th exception states an untenable proposition of law in this, that it assumes that, in order to acquit, the jury must have a belief in the innocence of the accused, whereas the law requires only that they shall entertain but a reasonable doubt of their guilt.

25th. "It is also shown that Theodore P. Haughey, as such president, had the entire custody, control, and management of the affairs of the bank, and that the directors of the bank gave him no authority to do or commit the various alleged criminal acts charged against him in the indictment."

The matter covered by the 25th exception is erroneous, in that it states to the jury as a thing shown and settled that the directors of the bank had given the president no authority to do the various acts charged against him, which was a disputed question, the defendants contending that the directors had given to said Haughey exclusive control of the management of the bank and that the evidence tended to show.

26th. "It is further proved that large sums of money were obtained from the bank by the Indianapolis Cabinet Company
201 by means of notes, drafts, and bills of exchange, which are now wholly or partially valueless."

The matter covered by this exception is an assumption that the fact is proven which is disputed in the evidence.

27th. "It is also shown that various sums of money were obtained from the bank by means of checks drawn upon it by the Indianapolis Cabinet Company, which were presented to and cashed by the bank out of its moneys and funds when said cabinet company had no funds on deposit with which to pay such checks."

The matter covered by this exception is bad for the same reason at that covered by the 26th.

The defendants and each of them also except to the refusal of the court to give to the jury each of the following instructions, presented to the court and asked by the defendants to be given prior to the commencement of the argument, to wit: The second, the third, the fourth, the fifth, the sixth, the seventh, the eighth, the ninth, the tenth, the eleventh, the twelfth, the thirteenth, the fourteenth, the fifteenth, the sixteenth, the seventeenth, the eighteenth, the nineteenth, the twentieth, the twenty-first, the twenty-second, the twenty-third, the twenty-fourth, the twenty-fifth, the twenty-sixth, the twenty-seventh, the twenty-eighth, the twenty-ninth, the thirtieth, the thirty-first, the thirty-second, the thirty-third, the thirty-fourth, the thirty-fifth, the thirty-sixth, the thirty-seventh, the thirty-eighth, the thirty-ninth, the fortieth, the forty-first, the

forty-second, the forty-third, the forty-fourth, and the forty-fifth, severally.

JOHN S. DUNCAN,
MILLER, WINTER & ELAM,
LAWSON HARVEY,
Att's for Defendants.

202 And thereupon the jury having returned a verdict of guilty against said defendants and each of them, as elsewhere set out in the record, and, afterwards, to wit, on the 4th day of June, 1894, a motion for a new trial, made on behalf of the defendants, having been overruled, to which ruling the defendants then and there excepted, a motion in arrest of judgment was made on behalf said defendants and each of them; which motion is in the words and figures following, to wit:

District Court of the United States, District of Indiana.

THE UNITED STATES *vs.* FRANCIS A. COFFIN, PERCIVAL B. COFFIN, and ALBERT S. REED.	No. 4926. Motion in Arrest of Judgment.

The defendants and each of them move the court for an arrest of judgment in this case for the reason that neither count of said indictment states facts sufficient to constitute a crime under the statutes of the United States.

DUNCAN D. SMITH,
MILLER, WINTER & ELAM AND
LAWSON HARVEY,
Att'ys for Defendants.

203 Be it further remembered that on the 7th day of June 1894, the defendants presented to the court their bill of exceptions, identical with this bill, until the point is reached wherein commences the recitation verbatim of the statements of the court and counsel, immediately preceding the retirement of the jury, touching the matter of the conduct of the jury and the exceptions of the defendants to parts of the instructions given by the court, as to which last-named matters said bill contained the recitation as follows:

"And, thereupon, before the retirement of the jury, the defendants and each of them did except to the giving of each of the parts of said instructions so given, hereinafter set forth, and were allowed 120 days in which to file their bill of exceptions, such parts of instructions so excepted to and such reasons, so far as then written, being in the words and figures following to wit:"

Here followed the parts of instructions so excepted to, with the exceptions of the defendants to the same, as hereinbefore set forth. But the court declined to sign said bill of exceptions containing said statements, unless the defendants' exception to the following part

of the instructions given by the court should be omitted therefrom, to wit:

"I do not wish to be understood as meaning that the intent to injure, deceive, or defraud is conclusively established by the simple proof of the doing of the prohibited acts which result in in-
204 jury. What I do mean is this: That when the prohibited acts are knowingly and intentionally done and their natural and legitimate consequences are to produce injury to the bank or to benefit the wrong-doer, the intent to injure, deceive, or defraud is thereby sufficiently established to cast on the accused the burden of showing that their purpose was lawful and their acts legitimate."

Such refusal upon the part of the court being based upon the ground that such part of the instructions given by the court were embraced in and covered by the reservation made at the time the jury was about to retire in the following expression of the court, to wit:

"The COURT: Except in so far as any mere verbal changes are concerned, which, if the court's attention were drawn to, it would at once correct, I have no objection to that method of procedure."

And thereupon this bill of exceptions is made to show the facts as they actually occurred.

And on this 9th day of June, 1894, the court writes the statement in reference to the disallowance of exception numbered 22, as above set out, and thereupon signs this bill, as hereinafter shown.

205 Which motion was by the court on the same day overruled as to all the counts of the indictment except those numbered from seventeen to thirty-six, both inclusive, as to which it was sustained; to which ruling overruling said motion the defendants and each of them then and there excepted; and thereupon the court allowed the defendants 100 days in which to file bills of exceptions as to exceptions taken on said trial and proceedings.

And the defendants now present this their bill of exceptions and ask that the same may be signed and sealed and made a part of the record, which is done accordingly this 9th day of June, 1894.

JOHN H. BAKER, *Judge.*

And afterwards, to wit, at the May term of said court, on the 12th day of June, 1894, before the Honorable John H. Baker, judge as aforesaid of said court, the following further proceedings in the above-entitled cause were had, to wit:

Come now the defendants, Francis A. Coffin and Percival B. Coffin, by counsel, and file their petition for a writ of error herein in the words following, to wit:

206 United States District Court, District of Indiana.

THE UNITED STATES *vs.* FRANCIS A. COFFIN, PERCIVAL B. COFFIN, and ALBERT S. REED.	No. 4926. Application for a Writ of Error to the Supreme Court of the United States and for Supersedeas.

To the Honorable John M. Harlan, associate justice, etc.:

The said Francis A. Coffin and Percival B. Coffin respectfully petition that a writ or error be issued in this cause on their behalf to the end that the proceedings and trial had in this cause may be reviewed by the Supreme Court of the United States.

The undersigned, Francis A. Coffin and Percival B. Coffin, further respectfully petitioning show to your honor that they are by the judgment of the district court of the United States for the district of Indiana sentenced to serve terms in the Northern penitentiary of the State of Indiana, the said Francis for a period of ten years and the said Percival for a period of five years, both from June 4th, 1894; that in said record are many and manifest errors committed by the trial court to the prejudice of these defendants as shown by said record and the assignment of errors thereto attached, which are herewith presented, whereby your petitioners were prevented from having a fair trial.

207 Wherefore your petitioners pray your honor to order that said writ of error shall operate as a supersedeas pending a hearing of said cause in the Supreme Court, and that in the meantime these petitioners be enlarged on bail to be fixed by your honor, and your petitioners will ever pray, etc.

FRANCIS A. COFFIN,
PERCIVAL B. COFFIN,
By their attorneys, W. H. H. MILLER.
F. WINTER.
JOHN B. ELAM.
JOHN S. DUNCAN.

And at the same time said defendants, Francis A. Coffin and Percival B. Coffin, file their assignment of errors herein in the words following, to wit:

208 In the Supreme Court of the United States.

FRANCIS A. COFFIN, PERCIVAL B. COFFIN, and ALBERT S. REED *vs.* THE UNITED STATES.	No. —. In Error to the District Court of the United States for the District of Indiana.

Assignment of Errors.

Francis A. Coffin, Percival B. Coffin, plaintiffs in error, by their counsel come and, complaining of the United States, say there is manifest error in the proceedings of the trial court in this, to wit:

First. Because the trial court erred in overruling the defendants' motion for an arrest of judgment upon said indictment in so far as the same was overruled.

Second. The trial court erred in permitting the witness Edward Hawkins, who was receiver of the Indianapolis National bank, to testify as to his classification of the assets of said bank as scheduled and forwarded to the department. The same witness had just stated that the total face assets of the bank were $2,098,268.65. The witness was asked the question, "What was the general character of the assets—that is, as to being good, worthless, or doubtful?" The answer was, "The assets were scheduled and forwarded to the department as good assets, $878,946.04.

209 Third. The trial court erred in permitting the same witness to testify as to the value of the assets of the Wooten Office Desk Company, said witness not having shown that he had made any investigation of the affairs of said company or had any knowledge thereof. The witness testified as follows:

"If my figures are correct, and I think they are, $21,759.43, that is unsecured, and I consider it worthless."

The court erred in refusing to permit the defendants to cross-examine the same witness as to the various items of paper making up the indebtedness of the Indianapolis Cabinet Company, the Emerson-Moore Desk Company, and other companies under the control of the Indianapolis Cabinet Company, which, the witness had testified in his direct examination, amounted to $375,860.50 at the conclusion of such direct examination, but required the defendants to wait for such cross-examination for several days while a large amount of other Government testimony was heard.

Fifth. The trial court erred in permitting the Government to give testimony against the defendants under either of the counts of said indictment, because—

a. Neither count of said indictment alleges that the defendants at the time of their alleged criminal acts knew that said Haughey was president of said bank.

b. Neither of said counts alleges that the defendants at the time of their action complained of had any knowledge of the alleged wrongful acts of Haughey.

210 *c.* Neither of said counts upon which judgment was rendered alleged an actual conversion of the moneys, funds, or credits of the bank to the use of the Indianapolis Cabinet Company, but only an intent to so convert.

d. Because neither count of said indictment alleged that the defendants were officers, agents, directors, employees, or in any way connected with said bank, as in fact they were not.

e. And the defendants further objected to the introduction of any evidence under the first count of said indictment because said count did not aver the value of a pound sterling and the court could not take judicial notice thereof, and said count further failed to aver that the Indianapolis Cabinet Company was insolvent; and thereupon the witness, Louis J. Robinson, on behalf of the Government

testified that the value of a pound sterling varied from $4.84 to $4.89 during the time covered by this indictment.

f. And the defendants further objected to such evidence on the ground that the intent charged against the defendants was not a like intent with that charged against Haughey, in that the intent charged against Haughey was that the property should be converted to the use of the Indianapolis Cabinet Company, and that his intent was also to injure and defraud the association, whereas only the latter intent was charged against the defendants.

g. In that the transactions complained of by the Govern-
211 ment were in the nature of loans, and that such a transaction is not within the denunciation of this section of the statute.

Sixth. The trial court erred not only in overruling said last objection, but in the statement made in the presence of the jury overruling the same as follows:

"It would be a sorry state of the law if a corrupt banker standing on the inside of the counter could loot the bank in favor of criminals that stood on the outside of the counter and there was no law to reach them."

Seventh. The trial court erred in allowing the Government to introduce in evidence, in support of count one of the indictment, a check for the sum of $5,802.84, when said count called for a check for 1,194 pounds sterling.

Eighth. The trial court erred in stating in the presence of the jury during the cross-examination of the witness, L. V. Horton, that in his judgment the Wooten Office Desk Company hadn't a cent's interest in the business or property held in its name at Richmond or in Indianapolis, and in refusing to permit the witness to be cross-examined touching the same by the defendants.

Eight and one-half. The trial court erred in overruling the defendants' motion, made at the conclusion of the Government's testimony, that the Government be required to elect as to what particular transaction it would rely upon as a basis for a substantive charge under each of the general counts of the indictment, such counts being numbered from 17 to 36, both inclusive.

212 Eight*h* and five-eighths. The trial court erred in permitting the Government to prove the organization of "The Indianapolis National bank" under an indictment charging that the name of said bank was "The Indianapolis National Bank of the City of Indianapolis in the State and District of Indiana."

Eight*h* and six-eighths. The trial court erred in overruling the defendants' motion for a continuance on account of the disability of their leading counsel.

Eight*h* and seven-eighths. The trial court erred in overruling the defendants' motion for a new trial.

213 Ninth. The trial court erred in refusing to give to the jury the following instructions asked by the defendants, to wit:

II.

The indictment consists of forty-six counts, each of which purports to charge a separate and independent violation of this statute, constituting a separate and independent crime. Before you will be authorized to render a verdict of guilty against the defendants or either of them, it must have been proven, not merely that the defendants or one of them so found guilty has committed some wrongful act, but it must appear from the evidence, beyond a reasonable doubt, that such defendant has committed the precise act charged in some one or more of the counts of the indictment, since the Government is entitled to a verdict only in case it has proved the particular wrongful act or acts alleged in some one of the counts of the indictment against one or more of the defendants.

Tenth. The trial court erred in refusing to give to the jury the following instruction asked by the defendants, to wit:

III.

The statute under which this prosecution is made is a highly penal statute and is to be strictly construed; and, while you have nothing to do with determining the law of the case, which in
214 this court is for the judge alone, yet, being a statute of the character named, offences charged thereunder must be proven strictly according to its terms, and, failing such proof in this case, the defendants are entitled to a verdict of not guilty.

Eleventh. The trial court erred in refusing to give to the jury the following instruction asked by the defendants, to wit:

IV.

As already stated, each count of this indictment must, upon the proof, stand or fall by itself. So far as your consideration goes, each count stands as if it were a separate and independent indictment, and you have to consider the particular charge made against the defendants in each count and the proof applicable thereto, precisely as if that were the only charge in the indictment, and your finding upon each count must be guilty or not guilty, as the proof applicable to that particular count proves or fails to prove that specific charge.

Twelfth. The trial court erred in refusing to give to the jury the following instructions asked by the defendants, to wit:

V.

The first count of the indictment, which purports to charge a willful misrepresentation of the funds of the bank by the said Haughey as president with the intent to defraud the association, alleges that the Indianapolis Cabinet Company presented to
215 the bank and to Haughey as its president a bill of exchange for the sum of one thousand one hundred and ninety-four pounds sterling (1,194), which bill of exchange was received by said

Haughey, placed to the credit of said cabinet company upon the books of said bank, and that thereupon said cabinet company drew its check for said sum upon said bank, which was then and there paid by said bank under the direction of said Haughey.

You will observe that the charge is that the cabinet company drew its check for "said sum," namely, for one thousand one hundred and ninety-four pounds sterling. There is no allegation in this count as to what a pound sterling is. As matter of fact, the proof is that the check was for the sum of five thousand eight hundred and two dollars and eighty-four cents ($5,802.84). Whether this is a larger or smaller or an equivalent sum to one thousand one hundred and ninety-four pounds sterling is not alleged in the indictment, and upon this state of the allegations and proof I instruct you that the Government is not entitled to a verdict on this count, and therefore, as to the first count, your verdict must be not guilty.

13th. The trial court erred in refusing to give to the jury the following instruction asked by the defendants, to wit:

VI.

In each of the counts of said indictment based upon the alleged wilful misapplication of the moneys, funds, or credits of said
216 bank, it is charged, and it is necessary to be charged in such count, that such misrepresentation was made by said Hughey as president of the bank, but in none of said counts is it alleged that the said defendants or either of them, charged with aiding and abetting said Haughey, knew at the time that he was president of such bank. In the absence of such averment of knowledge on their part no sufficient charge of crime is made against them, and therefore upon each of such counts your verdict must be not guilty.

Fourteenth. The trial court erred in refusing to give to the jury the following instruction asked by the defendants, to wit:

VII.

If upon the whole proof it appears that Mr. Haughey, in permitting or causing the moneys, funds, or credits of the bank to be applied to the use of the Indianapolis Cabinet Company at any of the times charged in the indictment, did so, not because he wished to defraud or injure the bank or any other person or party or deceive the bank examiner, but because he believed that under all the circumstances so to do was for the best interest of the bank, then, as to such counts for misapplication, your verdict should be not guilty.

Fifteenth. The trial court erred in refusing to give to the jury the following instruction asked by the defendants, to wit:

217 VIII.

If, upon all the facts proven in the case, it appears that at each of the times at which Mr. Haughey, president of the bank, is charged

in the indictment with having made a criminal misapplication of the moneys, funds, or credits of the bank, the condition of the bank and the Indianapolis Cabinet Company were such that for the bank to have refused further credit to the cabinet company would probably have resulted in the failure of that company and of the bank, and if it further appears that upon all the evidence that Mr. Haughey, knowing or in good faith believing such to be the case, did furnish such further aid to the cabinet company with the *bona fide* hope and intention of saving the bank from disaster and not with the intent to injure the bank or any one else or deceive the bank examiner, then your verdict should be not guilty as to all counts charging such criminal misapplication of the funds of the bank.

Sixteenth. The trial court erred in refusing to give to the jury the following instruction asked by the defendants, to wit:

IX.

A misapplication of the funds by a president can only be aided and abetted by parties who are acting with him to a common end and with a common intent. If in this case the defendants, by reason of the large indebtedness of the Indianapolis Cabinet Company, held the bank and the president in their power, and he fear-
218 ing that a refusal of further credit to them would result in a disclosure of the amount of their said debt and the ruin of his bank, and for this reason let them have the money and paid their checks, then said Haughey and said defendants did not act with a like intent, and this proof would not sustain the indictment for misapplication.

Seventeenth. The trial court erred in refusing to give to the jury the following instruction asked by the defendants, to wit:

X.

An essential element of the offense charged in each count of this indictment is the alleged wrongful intent. The charge in each count for the misapplication of the moneys, funds, and credits of the bank is that Haughey, the president, committed the acts alleged with intent to injure and defraud the bank or some other persons or corporations or to deceive certain officers and directors of the bank, and that the defendants aided and abetted him with like intent. In order to warrant a verdict of guilty on any of these counts for misapplication, therefore, you must be satisfied from the evidence beyond a reasonable doubt, not only that Mr. Haughey did the particular acts charged and that the defendants aided and abetted him therein, but you must be further satisfied from the evidence beyond a reasonable doubt that Mr. Haughey did said acts with the criminal intent aforesaid, and that the defendants aided and abetted him in such acts with a like criminal intent.

219 Eighteenth. The trial court erred in refusing to give to the jury the following instructions asked by the defendants, to wit:

XI.

The making of *bona fide* loans of the money of the bank by the president thereof was not a misapplication of the funds of the bank within the meaning of this statute, even though such loans may have been made to parties who were insolvent and known by the president to be so at the time such loans were made. If, therefore, upon the whole evidence in this case it appears that the moneys, funds, and credits of the bank charged to have been misapplied by the president were, in fact, *bona fide* loans, even though upon insufficient security, your verdict, upon the counts charging misapplication, must be not guilty.

Nineteenth. The trial court erred in refusing to give to the jury the following instruction asked by the defendants, to wit:

XII.

On behalf of the Government it is claimed that the moneys, funds, and credits of the bank furnished to the Indianapolis Cabinet Company as charged in the various counts of the indictment for misapplication were not *bona fide* loans, but that the same were wholly fictitious, and the paper upon which they were based was utterly worthless. On the other hand, the defendants claim that for all of the indebtedness of the Indianapolis Cabinet Company to the bank the entire property and assets of said cabinet
220 company were liable, first, under the mortgage executed by said cabinet company; and, second, as general debts of that corporation, and they further claim that the assets of said corporation at the time of the failure of the bank and during all the time while such advancements were being made were of the value of several hundred thousand dollars. If upon all the proof it appears that the paper upon which such loans were made was of real and substantial value, and that the bank is now holding and seeking to collect such paper out of the assets of said cabinet company, then you cannot hold such paper to be worthless and said loans to be wholly fictitious, and upon such state of the proof you would not be warranted in basing a verdict of guilty upon the theory that such transactions were not *bona fide* loans.

Twentieth. The trial court erred in refusing to give to the jury the following instruction asked by the defendant, to wit:

XIII.

Whether the transactions by and through which Mr. Haughey let the cabinet company have the moneys, funds, and credits under consideration in this case were *bona fide* loans by the bank to the cabinet company, as contended by the defendants, or were simply pretences used to cover the misapplication of such moneys, funds, or credits, as contended by the Government, is a question of fact for your exclusive determination on the evidence and under the rules of law as given you by the court.

221 Twenty-first. The trial court erred in refusing to give to the jury the following instruction asked by the defendants, to wit:

XIV.

The intent on the part of Mr. Haughey in the alleged misapplication of the moneys, funds, and credits of the bank is an essential ingredient of the offence charged against the defendants, because it is alleged that they acted with like intent. In determining the question, therefore, of Mr. Haughey's intent you should take into consideration the relation he bore to this bank, both as an officer and a shareholder, and whether the evidence shows any motive on his part for defrauding or injuring the bank or deceiving any officer or the bank examiner or any other person, and it is for you to say, in the light of all this proof, whether Mr. Haughey, in letting the cabinet company have such moneys, funds, or credits, did so with such criminal intent. If the proof does not satisfy you of such criminal intent, then the Government's case is not made out. In determining this question you may consider whether Mr. Haughey was asking credit of the bank at this time or seeking to obtain any of its property or was in any way benefitted by the loans or advances to the cabinet company. If you find from the proof that such motives existed on the part of Mr. Haughey, they might go far toward satisfying you that the guilty intent existed, but if, on the contrary, you find from the proof that there was no such motive or object on the part of Mr. Haughey, it should weigh upon the other side
222 of the scale and at least tend to show that there was no such intent as is charged.

Twenty-second. The trial court erred in refusing to give to the jury the following instruction asked by the defendants, to wit:

XV.

If you shall find it to be a fact that said Haughey paid to the cabinet company and allowed it to receive the moneys, funds, and credits of the bank in excess of ten per cent. of its capital stock, such fact does not of itself sustain the charge of a criminal misapplication of the funds of the bank. It is true the statute provides that no more than ten per cent. of the capital stock of the bank shall be loaned to any one person or party, but it does not make it a crime on the part either of the bank officers to make or of the customer to receive loans in excess of that sum. In order to bring the case within the denunciation of this statute as a crime it must be shown not merely that such excessive loan was made, but that it was made with the criminal intent aforesaid, and in order to sustain the charge against the defendants it must be shown that they aided and abetted with the same or like intent.

Twenty-third. The trial court erred in refusing to give to the jury the following instruction asked by the defendants, to wit:

XVI.

The 37th count of the indictment charges that on the 30th
223 day of March, 1892, the said Haughey, as president, made a certain false entry in one of the individual ledgers of said bank whereby the said cabinet company was given a credit of $20,480.76; that said entry was known by said Haughey at the time to be false and was made with intent to injure and defraud the bank.

The 38th count makes the same charge, except that the intent imputed to Haughey was to deceive any agent or bank examiner sent by the Comptroller to examine the bank.

Each count charges that the defendants aided and abetted Haughey with like intent as that charged against him.

The 39th and 40th counts of the indictment in like manner charge a false entry made by Haughey as president on one of the individual ledgers of the bank on the 9th day of May, 1893, such entry giving to the cabinet company a false credit of $44,000, in the 39th count the intent charged being to deceive the bank examiner and in the 40th count to injure and defraud the association.

As to each of these counts, the charge of aiding and abetting is made against the defendants with like intent in each as charged against Mr. Haughey.

The 41st and 42nd counts charge similar false entries, differing only as to time and amount, as do also the 43rd, 44th, 45th, and 46th counts.

With reference to each of these counts charging the making of false entries, the intent to injure and defraud the bank or to deceive
the bank examiner is the essence of the offence and must not
224 only be proven, but must be proven as laid in the indictment and beyond a reasonable doubt. It must appear from the evidence that the false entries complained of, if they were false, were either made to injure or defraud the bank or to deceive the bank examiner. If the proof shows only an intent to defraud some party other than the bank or to deceive some party other than the bank examiner it would not be sufficient. An intent to deceive other persons, creditors, or depositors of the bank or to deceive the Comptroller or the public in regard to the standing of the bank will not sustain the charge of making false entries which you are sworn to try, so that the proof must satisfy you, not only that the entries complained of were false, but that they were made with the specific intent alleged. In determining this question of intent with reference to these alleged false entries, as in relation to alleged misapplications, you should take into consideration the relation Mr. Haughey bore to this bank as an officer and shareholder as well as any efforts he is shown by the evidence to have made to protect the interests and sustain the credit of the bank from time to time, and it is for you to say, in the light of this proof, whether Mr. Haughey by these false entries, if you find that they were false and that he made them, intended to injure or defraud the bank or deceive the bank examiner or whether they were simply designed to sustain the credit of

the bank with its depositors or other creditors and with the Comptroller and with the public who dealt with the bank. If the proof does not satisfy you that Mr. Haughey acted with the criminal intent charged, then the Government's case as to these counts is not made out.

In this connection you may properly inquire, in the light of the proof, whether Mr. Haughey had any motive to injure or defraud the bank or to deceive the bank examiner. Does the evidence show that he was asking credit of the bank at the time or seeking to obtain any of its property or that he would be benefited by the making of this false entry? If you find from the proof that he had such motive they might go far toward satisfying you that the guilty intent existed; but if, on the contrary, you find that there was no such motive or object on the part of Mr. Haughey, it should weigh upon the other side of the scale and at least tend to show that there was no such intent as is charged.

Twenty-fourth. The trial court erred in refusing to give to the jury the following instruction asked by the defendants:

XVII.

It is equally true that the intent to injure and defraud the bank or to deceive the bank examiner is the essence of the offence charged against the defendants as aiders and abettors of Mr. Haughey, the president, in making false entries. In order to convict them on any count relating to false entries, the proof must not only show that Mr. Haughey did the acts complained of with the specific criminal intent charged, but it must also be shown that the defendants aided and abetted him with like specific criminal intent—that is, they must have acted either with an intent to injure or defraud the bank or to deceive the bank examiner. If upon all the facts proven in relation to false entry charges you should have a reasonable doubt whether the defendants acted with the intent to injure or defraud the bank or to deceive the bank examiner, the Government's case as to these counts would not be made out against them.

Twenty-fifth. The trial court erred in refusing to give to the jury the following instruction asked by the defendants:

XVIII.

In considering the false entry charges in the indictment it is necessary that you shall know what constitutes a false entry. The books of account of a bank are kept for the purpose of accurately and truly recording the financial transactions of the bank. An entry upon the books of the bank of some alleged transaction which never occurred or of a transaction which did occur, but which is falsely recorded, would be a false entry; but any entry in which that which has been done by the officers or agents of the bank is correctly set forth in detail is not a false entry. If, therefore, you find from the evidence—for instance, with reference to the alleged false entry in the 40th count—that the bank had actually given to the cabinet company the credit for $44,000 upon the paper

presented by the cabinet company and had authorized said cabinet company to make its checks against said credit, and that said entry was made upon the books simply as a truthful record of that which had been done, then the same was not a false entry, but was and is a true entry, and the indictment, so far as based upon such entry, cannot be sustained.

Twenty-sixth. The trial court erred in refusing to give to the jury the following instruction asked by the defendants:

XIX.

If Mr. Haughey, as president of the bank, received from the cabinet company drafts, bills, or notes which by reason of the insolvency of the parties or for any other reason ought not to have been received and gave to said cabinet company credit therefore and afterwards caused an entry of such credit to be made upon
228 the books of the bank, then whatever wrong was done in the matter by Mr. Haughey was not in causing such entry to be made, but was, further back, in receiving the paper and giving the credit. Not to have made the entry after receiving the paper and giving the credit would have been to commit another wrong, since it was his duty, as president of the bank, to see that the books should speak the exact truth as to that which he had caused to be done, and, however wrongful may have been his previous act, the making of an exact and truthful record of the same in the books of the bank was and could be no crime under this statute.

Twenty-seventh. The trial court erred in refusing to give to the jury the following instruction asked by the defendants:

XX.

A good deal of evidence has been introduced by the Government and by the defendants with reference to the value of the plant and other assets of the Indianapolis Cabinet Company. Some of this evidence has relation to the value of the property during the years 1890, 1891, and 1892, some of it with relation to the value at the time of the failure in 1893, and some of it with relation to the value of it after the failure of the bank and the cabinet company, and from that time to this. Some question has been made in the introduction of the testimony as to what is the proper basis for the valuation of this property. So far as the evidence of values is
229 important, it should have relation to the time during which the alleged wrongful acts charged against the defendants were committed, and the time or times at which they were obtaining the money, funds, or credits from the bank, and such values should be determined with reference to all the circumstances surrounding said cabinet company and said business at those times, namely, from about the 6th day of January, 1891, until near the time of the failure in 1893. This value is to be measured not by what the property would bring at a forced sale under the hammer nor at a fancy price which might be placed upon it by a holder not wishing to sell. The true criterion is its market value, and "the market

value of property is the price which it will bring when it is offered for sale by one who desires but is not obliged to sell and is bought by one who is under no necessity of having it." In estimating its value all the capabilities of the property and all the uses to which it is adapted are to be considered. In the language of the Supreme Court of the United States, "The inquiry in such cases must be, what is the property worth in the market, viewed not merely with reference to the uses to which it is at the time applied, but with reference to the uses to which it is plainly adapted—that is to say, what it is worth from its availability for valuable uses? * * * Its capability being made thus available gives it a market value which can be readily estimated." Applying these rules and considering all the evidence on the subject which has been placed before
230 you, both by the Government and by the defendants, you will be able to arrive at a just conclusion as to the fair market value of this property during the period in controversy.

Twenty-eighth. The trial court erred in refusiug to give to the jury the following instruction asked by the defendants:

XXI.

In order to warrant a conviction of the defendants as aiders and abettors of Mr. Haughey in the making of false entries as charged in this indictment it is not enough to show that the entries were false and that Mr. Haughey made them with the criminal intent charged, but it must also be shown by the evidence beyond a reasonable doubt that the defendants had knowledge of the making of such entries and that they did acts aiding and abetting Mr. Haughey in making the same with like criminal intent. Proof of the fact that the defendants presented the paper covered by the false entry and received credit for the same is not sufficient to warrant their conviction for aiding and abetting the making of the false entry on the books unless some knowledge of or connection with the making of such false entry is brought home to them.

Twenty-ninth. The trial court erred in refusing to give to the jury the following instruction asked by the defendants:

22½.

231 If you find from the evidence that the Indianapolis Cabinet Company's account in the Indianapolis National bank being overdrawn the defendants or either of them as officers of such cabinet company and at the request of Haughey, president of the bank, furnished to said bank bills, drafts, and notes of parties possessed of little or no means, aggregating an amount sufficient to balance and more than balance such account, which said Haughey as president received and placed to the credit of said cabinet company in said account, such action on the part of said Haughey giving such credit and entering the same in the books of the bank, whatever may have been his motive, was not making a false entry within the meaning of this statute.

Thirtieth. The trial court erred in refusing to give to the jury the following instruction asked by the defendants:

XXII.

In each of the thirty-six counts of this indictment based upon the alleged misapplication of the moneys, funds, and credits of the bank by Mr. Haughey, except the 1st, the 19th, the 29th, the 32nd, and the 33d counts, it is charged that the Indianapolis Cabinet Company at the time of the alleged misapplication was insolvent and that the said Haughey knew of such insolvency. This averment having been thus made in these several counts of the indictment it was necessary that the same should be proven in order to warrant a conviction. If, therefore, it has not been shown by the evi-
232 dence beyond a reasonable doubt that the Indinapolis Cabinet Company at such times was insolvent, and that the said Theodore P. Haughey knew of such insolvency at said times, then, as to each of said counts containing said charge the Government has failed to sustain its case.

Thirty-first. The trial court erred in refusing to give to the jury the following instruction asked by the defendants:

XXIII.

A person charged with crime in this court is entitled to a statement in the indictment of the facts alleged to constitute such crime sufficiently definite and specific to enable him to know with what wrongful acts he is charged and fairly to prepare his defense. For this purpose the grand jury in framing the indictment are required to state facts, names, and circumstances material to an intelligent description of the alleged offense. From the necessity of the case, when such material facts, names, and circumstances are unknown and cannot by reasonable diligence be learned by the grand jury, the statement of the same in the indictment may be excused by an averment showing such lack of knowledge or inability to acquire the same, but such averment of lack of knowledge is a material averment in the indictment and must be proved like any other material fact therein, and a failure to make such proof, both of such lack of knowledge and of inability to acquire the same by reasonable diligence, is a failure of proof which will defeat such indictment or the particular count in which it may be alleged.

233 Thirty-second. The court erred in refusing to give the following instruction asked by the defendants:

XXIV.

Each of the 46 counts of this indictment, except the 1st, the 40th, the 41st, and the 43d, alleges that certain facts therein referred to are unknown to the grand jury. Thus the 2nd, 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th, and 12th counts each avers a misapplication of the funds of said bank by said Haughey with intent to convert the same to the use of the Indianapolis Cabinet Company and to other persons to the grand jurors unknown. The averment that the names of

these persons were unknown to the grand jurors is a material averment and is necessary to be proven by the Government in order to make out its case in each of said counts, because in each of said counts the charge is of a misapplication of a single definite, fixed sum with an intent to convert the same to the use, not merely of the cabinet company, but of other persons. If, as a matter of fact, no evidence has been placed before you showing or tending to show that the names of such persons were unknown to the grand jury, then, as to these counts, the Government's case has failed.

Thirty-third. The trial court erred in refusing to give to the jury the following instruction asked by the defendants:

234 XXV.

In the 13th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22nd, 23d, 24th, 25th, 26th, 27th, 28th, 29th, 30th, 31st, 32nd, 34th, 35th, and 36th counts it is charged that said Haughey misapplied the moneys, funds, and credits of said banks, "a more particular description of said moneys, funds, and credits being to the grand jurors unknown." This averment that a more particular description was to the grand jurors unknown is a material averment in each of these counts, and if no proof has been made sustaining this averment, then the Government, as to such counts, has failed to make out its case and the defendants are, as to the charges in such counts, entitled to an acquittal.

Thirty-fourth. The court erred in refusing to give to the jury the following instruction asked by the defendants:

XXVI.

In the 13th, 14th, and 15th counts it is charged that the said Haughey as president made a criminal misapplication of the moneys, funds, and credits of the bank, not only with intent to convert the same to the use of said Indianapolis Cabinet Company and other persons to the grand jurors unknown, but, after stating the amount of such misapplication, it is alleged that a more particular description of said moneys, funds, and credits were to the grand jurors unknown, and that said moneys, funds, and credits were in
235 fact paid to the use and benefit of said Indianapolis Cabinet Company and divers other persons to the grand jurors unknown. Each of these averments of lack of knowledge on the part of the grand jury is a material averment in the count requiring to be supported by proof in order to make out the Government's case under such count, and, if such proof has not been placed before you, then, as to such counts, the defendants are entitled to an acquittal.

Thirty-fifth. The trial court erred in refusing to give to the jury the following instruction asked by the defendants:

XXVII.

In the 24th, 25th, 26th, 31st, and 34th counts of the indictment it is charged that said Haughey gave to said Indianapolis Cabinet

Company credits on the books of said bank for a large number of worthless and insolvent notes, drafts, and bills of exchange in a large amount, a more particular description of which is to the grand jurors unknown. This averment of lack of knowledge on the part of said grand jurors is a material averment in each of said counts, and, if the same has not been proved by evidence placed before you, then, as to each of those counts, there is a failure of proof and the defendants are entitled to an acquittal.

Thirty-sixth. The trial court erred in refusing to the jury the following instruction asked by the defendants:

XXVIII.

236 In the 27th count, a count for misapplication, it is charged that the alleged acts of misapplication were done by said Haughey with intent to deceive certain officers and directors of said association, whose names are to the grand jurors unknown. This averment of lack of knowledge on the part of the grand jurors is a material averment in said indictment, and a failure to prove that such grand jurors had not such knowledge is a failure to sustain the count by sufficient proof and requires a verdict of acquittal upon that count.

Thirty-seventh. The trial court erred in refusing to give to the ur y the following instruction asked by the defendants:

XXIX.

In counts No. 28 and 29, being counts for misapplication, it is averred that the acts of misapplication charged to have been done by said Haughey "were done and performed with intent to injure and defraud said association and certain companies, bodies politic, bodies corporate, and individual persons whose names are to the grand jurors unknown. This averment of lack of knowledge on the part of the grand jurors is a material averment in each of these counts, and if it has not been proven by evidence placed before you on this trial demands a verdict of acquittal from you upon each of these two counts.

Thirty-eighth. The trial court erred in refusing to give to the jury the following instruction asked by the defendants:

237 XXX.

In the 33d count, which is a count for misapplication of the moneys, funds, and credits of the bank, it is charged that the acts of misapplication were performed by the said Haughey with an intent to injure and defraud said bank and divers other persons to the grand jurors unknown. This averment of lack of knowledge on the part of said grand jurors is a material averment in this count necessary to be proven by the Government, and, if no evidence has been placed before you showing such lack of knowledge on the part of the grand jurors, the proof upon this count is insufficient and entitles the defendants to an acquittal thereon.

Thirty-ninth. The trial court erred in refusing to give to the jury the following instruction asked by the defendants:

XXXI.

In the 38th, 39th, 42nd, 44th, and 46th counts of this indictment, being counts for false entries, it is charged that such false entry in each count was made by said Haughey with intent to deceive any agent appointed or who might thereafter be appointed by the Comptroller of the Currency to examine the bank, the name or names of such agent or agents being to the grand jurors unknown. This averment of lack of knowledge on the part of such grand jurors is a material averment in each of these counts, and if not supported by proof—that is, if it is not shown by evidence introduced before you upon this trial that the said grand jurors did not know the
238 name of such bank examiner or examiners—then the Government has failed to make the necessary proof upon each of these counts, and the defendants are entitled to an acquittal thereon.

Fortieth. The trial court erred in refusing to give to the jury the following instruction asked by the defendants:

XXXII.

In the testimony in this case evidence has been offered on behalf of the Government to prove that at times the account of the Indianapolis Cabinet Company with the Indianapolis National bank was largely overdrawn—that is, that the cabinet company had drawn out from the bank a greater sum of money or other funds than it had deposited. If you shall find from the evidence that such was the fact, and that Mr. Haughey, president, permitted such overdraft to be made, that fact alone would not be sufficient to show any criminal intent on the part of Mr. Haughey. While an overdraft is not, perhaps, a regular and approved method of making loans from a bank, yet loans are not infrequently made by banks in that form and in the absence of other criminating circumstances are not within the denunciation of the statute upon which this transaction is based.

Forty-first. The trial court erred in refusing to give to the jury the following instruction asked by the defendants:

XXXIII.

In each of the counts in this indictment for misapplication, being counts from one to thirty-six, inclusive, it is averred that
239 the said Haughey, with criminal intent, misapplied the moneys, funds, and credits of the bank. By the section of the statute upon which this prosecution is based it is made a crime for the president to misapply with such criminal intent either the moneys, funds, or the credits of the bank—that is, a misapplication of the moneys would be one crime, a misapplication of the funds would be another crime, and the misapplication of the credits would

be a third and distinct crime. This being so, each of these counts is objectionable upon the ground of duplicity—that is, of charging more than one offense—and therefore no conviction can be had thereon.

Forty-second. The trial court erred in refusing to give to the jury the following instruction asked by the defendants:

XXXIV.

Some evidence has been given in this case tending to prove that the defendants as officers of the Indianapolis Cabinet Company and some of the other corporations organized as subsidiary thereto have made drafts for moneys upon persons and parties when no money was due or owing by such drawee to the drawer. If you find from the evidence that such drafts were made, the same not being drawn against values or upon parties owing the money so drawn for, such fact will not of itself warrant the conclusion that such drafts were either wholly fictitious or fraudulent, especially if you shall further find that such drafts were made for accommodation by an understanding between the drawer and drawee; and if you shall find, further, that such drafts or paper, if placed in the bank for discount, were in whole or in substantial part secured by bonds or other collateral or was of real substantial value this fact will be a further circumstance for your consideration, tending to show the good faith of such transactions with the bank.

240 Forty-third. The trial court erred in refusing to give to the jury the following instruction asked by the defendants, to wit:

XXXV.

If you find from the evidence that moneys were advanced by the Indianapolis National bank to the Indianapolis Cabinet Company for the purpose of assisting to start a branch of the business of the said company in London under the name of the Indianapolis Desk Company or to pay the drafts of said Indianapolis Cabinet Company on said Indianapolis Desk Company, with the understanding that said moneys were to be returned and that they were in fact returned to said Indianapolis National bank, then you will not be warranted in finding that such moneys were misapplied by said Haughey or that the defendants committed any crime in aiding and abetting him in such use of the funds of the bank.

Forty-fourth. The trial court erred in refusing to give to the jury the following instruction asked by the defendants, to wit:

XXXVI.

The counts of the indictment relating to misapplication charge a misapplication of the moneys, funds, and credits of the bank. A charge of misapplication of the credits of the bank is not sustained by merely showing that the bank gave to the cabinet company credit to which it was not entitled unless it is also shown that as a

result of such credit the cabinet company was enabled to
241 and did withdraw from the bank moneys, funds, or resources of some kind. Thus, evidence of the giving by the cabinet company and the receiving by the bank of renewal paper upon which nothing was withdrawn from the bank would not sustain the charge of criminal misapplication of the credits of the bank.

Forty-fifth. The trial court erred in refusing to give to the jury the following instruction asked by the defendants, to wit:

XXXVI½.

Evidence has been introduced before you upon the trial with reference to a draft drawn by the Indianapolis Cabinet Company on a party called the Tufts Cabinet Company and accepted by the latter, and also with reference to a note signed in the name of the Tufts Cabinet Company, payable and delivered to the Indianapolis Cabinet Company. On behalf of the Government it is claimed that said Tufts Cabinet Company never had any existence, but was purely fictitious. As no specific charge in any count of the indictment is based upon these transactions relating to the Tufts Cabinet Company, the same cannot be considered by you as a substantive charge of wrong-doing under any count of the indictment unless it has been shown to your satisfaction beyond a reasonable doubt that the grand jury at the time the indictment was found had no knowledge of this transaction, and, by the exercise of reasonable diligence, could not have acquired such knowledge.

242 Forty-sixth. The trial court erred in refusing to give to the jury the following instruction asked by the defendants, to wit:

XXXVII.

By the statute of limitations the defendants cannot be prosecuted for any offence committed more than three years prior to the finding of the indictment in this case. If you find from the evidence that a considerable part of the moneys, funds, or credits obtained from the Indianapolis National bank by the Indianapolis Cabinet Company were so obtained prior to such period of three years, then as to such moneys, funds, or credits no prosecution can be obtained for misapplication, either against Mr. Haughey or the defendants. There must be evidence separating and distinguishing beyond a reasonable doubt the transaction which occurred prior to such period from those which occurred within such period, and, unless the evidence does so separate and distinguish such transactions beyond a reasonable doubt, there can be no conviction of the defendants or either of them upon any of the counts charging wilful misapplication growing out of and based upon such intermingled and unseparated transactions.

Forty-seventh. The trial court erred in refusing to give to the jury the following instruction asked by the defendants, to wit:

XXXVIII.

If you shall find from the evidence that articles of asso-
243 ciation were from time to time filed by the defendants in accordance with the statutes of the State of Indiana for the creation of corporations within such State under the statute of the State providing for the incorporation of manufacturing companies, then, as matter of law, such corporations were thereby created, even though you should find that nothing was paid into the treasury of such corporation as capital stock and on such facts such corporation would not be a fictitious person.

Forty-eighth. The trial court erred in refusing to give to the jury the following instruction asked by the defendants, to wit:

38½.

Evidence has been introduced upon the trial with reference to a draft drawn by the Indianapolis Cabinet Company upon the Tufts Cabinet Company and accepted in the name of the latter company, and also with reference to a note given in the name of said Tufts Cabinet Company to the Indianapolis Cabinet Company, and it is claimed on behalf of the Government that there never was any such organization as said Tufts Cabinet Company, but that the same was wholly fictitious. This evidence has been permitted to be introduced before you for the purpose of throwing light upon the intent of the defendants in the management of the business of the Indianapolis Cabinet Company in connection with the charges of wrong-doing by them in the various counts of the indictment.

This evidence can only be considered by you for this pur-
244 pose, as there is no charge in any count of the indictment based upon this particular transaction.

Forty-ninth. The trial court erred in refusing to give to the jury the following instruction asked by the defendants, to wit:

XXXIX.

If there is evidence sufficient to raise a reasonable doubt in your minds as to whether or not any of the notes, drafts, or acceptances which were discounted by the Indianapolis National bank or placed to the credit of the Indianapolis Cabinet Company in its account with said bank or which were given in renewal of notes or drafts which had been so discounted or credits were executed in consideration of the fact that property of the Indianapolis Cabinet Company, upon which the Indianapolis National bank held a mortgage, was about to be shipped from the factory of said Indianapolis Cabinet Company to the parties to said notes or drafts other than the Indianapolis Cabinet Company, and in consideration of the consent of the Indianapolis National bank to such shipment and at its request for the purpose of putting it in the position of a creditor of such consignee, then, as to such notes or drafts, you cannot find that they were executed without a valuable consideration or that they were accommodation paper, and the execution of such paper

and its acceptance by the bank would not be a wilful misapplication of the moneys, funds, or credits of said bank.

245 Fiftieth. The trial court erred in refusing to give to the jury the following instruction asked by the defendants, to wit:

XL.

Ignorance of penal laws constitutes no defence to an indictment for their violation, but this rule has no application where knowledge or notice of the situation or of facts invoking the enforcement of the law is necessary.

With such knowledge of facts the intent to offend accompanies the act; without such knowledge or notice the evil intent is lacking.

See Pettibone *vs.* United States, 148 U. S. Op., p. 207.
Reynolds *vs.* United States, 98 U. S. Op., p. 167.

Fifty-first. The trial court erred in refusing to give to the jury the following instruction asked by the defendants, to wit:

XLI.

The law looks at the circumstances from the standpoint of the accused at the time he did the act, and if the accused has made proper inquiry and used due diligence and care, but still has been mislead concerning the actual facts and acts as he would be justified in doing were the facts what he believed them to be, his ignorance is justified and he is legally innocent as he is morally innocent.

People *vs.* Lamb, 54 Barb., 342.
246 Yates *vs.* People, 32 N. Y., 509.
4 Blackstone Com., 27.
Levet's case, 1 Hale C. P., 474.
Clark's Criminal Law, p. 68.
1 Bish. " " sec. 302.

Fifty-second. The trial court erred in refusing to give to the jury the following instruction asked by the defendants, to wit:

XLII.

While in criminal matters it is a general rule that every person must answer for his own acts, and that the command of no person can excuse an illegal act (4 Blackstone Com., 28), yet if, under all the circumstances, it appear that the defendant did the act charged by the order of one in authority over him and believing in good faith that the master had a right to order the act to be done, the doing of the act would not amount to an offense on the part of the agent.

Smith, Master & Servant, p. 404, 405.

Fifty-third. The trial court erred in refusing to give to the jury the following instruction asked by the defendants, to wit:

XLIII.

In cases of this character jurors must not only have a con-
247 scientious belief of the guilt of the accused, but they must have a conscientious conviction that there is no reasonable doubt of his guilt.

Batten *vs.* State, 80 Ind., 394.

Such a conviction as to the defendants' guilt must be produced by the evidence that a prudent man would feel safe to act upon that conviction in his most important matters.

If such conviction is not so produced, a reasonable doubt exists.

Farrel *vs.* State, 58 Ind., 293.
Bradley *vs.* State, 31 Ind., 492.

Fifty-fourth. The trial court erred in refusing to give to the jury the following instruction asked by the defendants, to wit:

XLIV.

The law presumes that persons charged with crime are innocent until they — proven by competent evidence to be guilty. To the benefit of this presumption the defendants are all entitled, and this presumption stands as their sufficient protection unless it has been removed by evidence proving their guilt beyond a reasonable doubt.

Fifty-fifth. The trial court erred in refusing to give to the jury the following instruction asked by the defendants, to wit:

XLV.

You are the exclusive judges of the weight of the testimony
248 and the credibility of witnesses, and you alone have a right to determine and it is your sworn duty to determine all questions of fact upon the evidence. Whatever discussion of the evidence or of the facts in the case has been or shall be made by the court is designed for your assistance in the way of suggestion only. The court has neither the right nor the desire to control you in weighing the evidence and reaching your own conclusions upon the facts of the case.

249 Fifty-six. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"In this class of offenses Congress has departed from its usual custom in criminal legislation and does not permit the court to determine the measure of punishment according to its discretion, but for itself has declared that if men of the high character of those employed in the national banking system and their *adi*ers and abettors shall violate the laws made to protect the public from wrong-doing by those engaged in the high and responsible trusts reposed in them, that they deserve and shall receive no less than five years' imprisonment. Without doubt Congress feared that courts might yield to such influences as were improper and lightly punish reputable men

for doing the forbidden acts by violating the important duties and trusts whose faithful performance Congress was determined to secure by these severe penalties. To neither court nor jury has been committed the power to condone these offenses by the imposition of light or trivial punishment as is permitted in most other cases in Federal criminal procedure. The statute itself is a protest against allowing our judgments to be controlled by sympathy for fallen pride and shipwrecked lives."

250 Fifty-seven. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"The funds entrusted to banks represent the scanty savings of the poor men and women of the country as well as the larger accumulations of the rich; and their preservation from loss by careless and improvident loans constitutes a trust of the most sacred character. No officer of a bank has any right to hazard the loss of such trust funds by making loans of them to parties of doubtful solvency or upon doubtful securities. The acceptance by any officer of a bill of exchange or draft is an unlawful act unless it is drawn in good faith against actually existing values. No officer of a bank has any right to accept any bill, draft, or other paper and give credit therefor on the books of the bank as a cash credit, unless such officer at the time of its acceptance honestly believes such bill, draft, or paper to be the actual equivalent of a like amount of money. The security of business and the preservation of the people from loss and injury demand that there should be a vigorous enforcement of these salutary principles of good faith and honest dealing on the part of officers of the bank."

251 58. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"If, therefore, it is shown by the proof beyond a reasonable doubt that Theodore P. Haughey, as president of the Indianapolis National bank, did willfully misapply the moneys, funds, or credits of the bank, as charged and described in the several counts of the indictment relating to that subject, by cashing, discounting, and paying for the use and benefit of the Indianapolis Cabinet Company out of the moneys, funds, and credits of said bank a large number of worthless notes, drafts, and bills of exchange, known by him to be worthless, drawn by and upon various insolvent persons, firms, companies, and corporations, and by paying out of the moneys, funds, and credits of the bank a large number of checks drawn upon it by the Indianapolis Cabinet Company in favor of divers persons, firms, and corporations when said cabinet company had no funds on deposit against which to draw, and he cashed or caused such checks to be cashed for the use and benefit of said cabinet company without the authority of the board of directors of said bank, with the intent to injure and defraud said bank, then he would be guilty of the offense charged."

252 59. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"And if the defendants, Francis A. Coffin, Percival B. Coffin, and Albert S. Reed, are shown by the proofs beyond a reasonable doubt

to have unlawfully and knowingly and with the like intent to injur- and defraud said bank aided and abetted the said Haughey, knowing him to be the president of the bank, in unlawfully and willfully misapplying the moneys, funds, and credits of said bank by converting the same to the use and benefit of the Indianapolis Cabinet Company, as charged in the severa- counts of the indictment relating to that subject, then they are guilty of the offense charged against them."

253 60. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"If, however, there are any willful misapplications shown by the evidence which are not covered by the special and specific counts, they may be included under the general counts and a verdict rendered thereon accordingly."

61. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"On the counts for willful misapplication the questions for you to determine are: Did Theodore P. Haughey, as president of the Indianapolis National bank, unlawfully and knowingly and with intent to *to* injure and defraud said bank as charged and described in the several counts of the indictment relating to that subject willfully misapply the moneys, funds, and credits of said bank by cashing, discounting, and paying for the use and benefit of the said Indianapolis Cabinet Company out of the moneys, funds, and credits of the bank without authority from its board of directors any notes, drafts, or bills of exchange drawn by and upon insolvent persons, firms, and companies, knowing such notes, drafts, or bills of exchange to be worthless? If he did he has committed the offense of willful misapplication as charged and described in the several counts of the indictment relating to that subject which have been established by the proofs."

254 62. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"Did Theodore P. Haughey, as president of the Indianapolis National bank, and with intent to injure and defraud said bank, as charged and described in the several counts of the indictment relating to that subject, unlawfully and willfully misapply the moneys, funds, and credits of said bank by cashing or paying or causing to be cashed or paid checks drawn upon it by the Indianapolis Cabinet Company in favor of various persons, firms, or companies when said cabinet company had no funds or credits on deposit against which to draw, and without authority from its board of directers? If he did he has committed the offenses of willful misapplication as charged and described in the several counts of the indictment relating to that subject which have been established by the proofs."

63. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"Did Francis A. Coffin, Percival B. Coffin, and Albert S. Reed unlawfully and knowingly, and with the like intent to injure and defraud said bank aid and abet said Haughey, knowing him to be the president of said bank, in unlawfully and willfully misapplying

the moneys, funds, and credits of said bank as charged and described in the several counts of the indictment relating to that subject which have been established by the proofs? If they did they have committed the offense of aiding and abetting in the willful misapplication of the moneys, funds, and credits of said bank as described and charged in the several counts of the indictment relating to that subject which have been proved."

255 64. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"Did Francis A. Coffin, Perceival B. Coffin, and Albert S. Reed, unlawfully and knowingly and with the like intent to injure and defraud said bank, aid and abet said Haughey, knowing him to be the president of said bank, in unlawfully and wilfully misapplying the moneys, funds, and credits of said bank as charged and described in the several counts of the indictment relating to that subject, which have been established by the proof? If they did, they have committed the offense of aiding and abetting in the wilful misapplication of the moneys, funds, and credits of said bank as described and charged in the several counts of the indictment relating to that subject which have been proved."

65. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"If, however, you are satisfied beyond reasonable doubt that Theodore P. Haughey is guilty of the wilful misapplication of the moneys, funds, and credits of the Indianapolis National bank with intent to injure and defraud said bank, as charged in the count or counts of the indictment relating to that subject, and that the defendants unlawfully and knowingly, and with like intent, aided and abetted said Haughey in such wilful misapplication, as charged in such count or counts, then you ought to find the defendants guilty as they stand charged in such count or counts of the indictment."

66. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

256 67. "You may find the defendants guilty upon all the counts of the indictment if you are satisfied beyond a reasonable doubt that the proofs justify you."

68. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"So if commercial paper known to be valueless was knowingly and purposely received and accepted by said Haughey as president of the bank without authority from its board of directors as solvent commercial paper, he knowing it to be valueless, and the person or company so negotiating such paper should by his direction be given a cash credit on the books of the bank for the face amount of such valueless paper with intent to deceive or defraud, such an entry or credit would constitute a false entry."

69. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"A credit upon the books of the bank to be valid and create the relation of creditor and debtor between the Indianapolis Cabinet

Company and the bank, must represent value received by the
257 bank in the shape of money or what is honestly deemed to be the equivalent of money. It must represent a *bona fide* indebtedness of the bank."

70. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"Such a credit on the books of the bank, obtained by the unauthorized acceptance of valueless paper or by credits fraudulently given, without some valid consideration passing to the bank at the time, is no credit in a legal sense, and when the funds of the bank are drawn out upon such credits they are wrongfully obtained."

71. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"Therefore, if the Indianapolis Cabinet Company obtained credit upon the books of the bank by making and negotiating to it notes, drafts, or other paper which Haughey and the defendants knew did not represent actual values, with intent to defraud the bank, such credits gave the cabinet company no right to the moneys represented by such credits."

72. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"Hence, if the natural and ordinary consequences of the acts of Haughey and the defendants, as shown by the evidence, were to injure and defraud the bank or to deceive and defraud any officer of the bank, you will be authorized to find that such was their intent, even tho' they may have been injured thereby."

258 73. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"I do not wish to be understood as meaning that the intent to injure, deceive, or defraud is conclusively established by the simple proof of the doing of the prohibited acts which result in injury. What I do mean is this: That when the prohibited acts are knowingly and intentionally done, and their natural and legitimate consequences are to produce injury to the bank or to benfit the wrong-doer, the intent to injure, deceive, or defraud is thereby sufficiently established to cast on the accused the burden of showing that their purpose was lawful and their acts legitimate."

74. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"In this case, if you are satisfied that the Indianapolis Cabinet Company, or any other person, firm, or corporation alleged to have been insolvent at the time charged, had not sufficient property and assets to pay its debts in full if wound up, then such person, firm, or corporation was insolvent."

75. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"If, therefore, you can reconcile the evidence with any reasonable hypothesis consistent with the defendants' innocence, it is your duty to do so, and in that case find the defendants not guilty; and if, after weighing all the proofs and looking only to the proofs, you

impartially and honestly entertain the belief that the de-
259 fendants may be innocent of the offenses charged against them, they are entitled to the benefit of that doubt, and you should acquit them."

76. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"It is also shown that Theodore P. Haughey as such president had the entire custody, control, and management of the affairs of the bank, and that the directors of the bank gave him no authority to do or commit the various alleged criminal acts charged against him in the indictment."

77. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"It is further proved that large sums of money were obtained from the bank by the Indianapolis Cabinet Company by means of notes, drafts, and bills of exchange which are now wholly or partially valueless."

78. The trial court erred in giving to the jury the following as a part of his instructions to said jury:

"It is also shown that various sums of money were obtained from the bank by means of checks drawn upon it by the Indianapolis Cabinet Company, which were presented to and cashed by the bank out of its moneys and funds when said cabinet company had no funds on deposit with which to pay such checks."

260 Wherefore the plaintiffs in error, Francis A. Coffin and Percival B. Coffin, pray that said judgment be in all things reversed.

FRANCIS A. COFFIN,
PERCIVAL B. COFFIN,
By their attorneys, WM. J. MILLER,
FRED. WINTER,
JOHN B. ELAM,
JOHN S. DUNCAN.

261 And afterwards, to wit, at the May term of said court, on the 15th day of June, 1894, before Honorable John H. Baker, judge of said court, the following further proceedings in the above-entitled cause were had, to wit:

Comes now Frank B. Burke, Esq., attorney for the United States, and comes also William H. Hawkins, United States marshal, and in obedience to the order of the Honorable John M. Harlan, associate justice of the Supreme Court of the United States, entered on the 14th day of June, 1894, now produces in court the bodies of Francis A. Coffin and Percival B. Coffin.

And said Francis A. Coffin and Hannah H. Swift, John Roberts, William E. Kurtz, and William E. Coffin, his sureties, now in open court acknowledge themselves to owe and be indebted unto the United States in the penal sum of twenty-five thousand dollars ($25,000), to be levied of their goods and chattels, lands and tenements if default be made in condition following—that is to say, that said defendant, Francis A. Coffin, shall be and appear in this court

on and after the filing in said court of the mandate of the Supreme Court of the United States, and from time to time as he may be required, to answer to any further proceedings and abide by and perform any judgment which may be had or rendered therein in this cause, and that he will abide by and perform any order and judgment which may be rendered or affirmed against him in the Supreme Court of the United States.

And said defendant, Percival B. Coffin, and Hannah H. Swift, John Roberts, William E. Kurtz, Joseph R. Perry, and William E. Coffin, his sureties, now in open court acknowledge themselves to owe and be indebted unto the United States in the penal sum
262 of twelve thousand five hundred dollars ($12,500), to be levied of their goods and chattels, lands and tenements if default be made in condition following—that is to say, that said defendant, Percival B. Coffin, shall be and appear in this court on and after the filing in said court of the mandate of the Supreme Court of the United States, and from time to time as he may be required, to answer to any further proceedings and abide and perform any judgment may be had or rendered therein in this cause, and that he will abide by and perform any order and judgment which may be rendered or affirmed against him in the Supreme Court of the United States.

263 UNITED STATES OF AMERICA, *District of Indiana,* } *ss:*

I, Noble C. Butler, clerk of the district court of the United States within and for the district aforesaid, do hereby certify that the above and foregoing is a full, true, and complete transcript of the record in the cause of The United States against Francis A. Coffin, Percival B. Coffin, and Albert S. Reed, as fully as the same remains upon the files and records now in my office.

Witness my hand and the seal of said court, at Indianapolis, in said district, this 16th day of June, 1894.

Seal District Court of the United States, District of Indiana.

NOBLE C. BUTLER, *Clerk.*

264 In the Circuit Court of the United States for the Seventh Judicial Circuit.

Before Honorable John M. Harlan, justice of the Supreme Court.

THE UNITED STATES
vs.
FRANCIS A. COFFIN, PERCIVAL B. COFFIN, ALBERT S. REED.

IN CHAMBERS AT CHICAGO, *June* 13, 1894.

Now, at this time, come the defendants above named, Francis A. Coffin and Percival B. Coffin, by Miller, Winter & Elam, their counsel, and also comes John W. Kern, Esq., special assistant district attorney of the United States, and thereupon said defendants present to the undersigned the record of the judgment and proceed-

ings in the above-entitled cause, accompanied by a petition for a writ of error, an assignment of errors, and also a petition that upon the allowance of said writ of error the same shall operate as a supersedeas and stay of execution and of proceedings upon the judgment of the court below, and that pending the hearing of said writ of error the defendants be admitted to bail.

And the court having heard and considered said petitions—

It is ordered that a writ of error to the Supreme Court of the United States be, and the same is hereby, allowed from the proceedings and judgment of the court below in the above-entitled cause, and that upon and after the service of citation on the district attorney of the United States for the district of Indiana, as required by law, the defendants in said cause shall thereupon be brought into the district court of the United States for the district of Indiana by the marshal of the United States for said district, and upon entering into their several recognizances the said Francis A. Coffin
in the penalty of $25,000.00 and the said Percival B. Coffin
265 in the penalty of $12,500.00, with sureties to the approval of
said court, conditioned that they severally will be and appe-r in said court on and after the filing in said court of the mandate of the Supreme Court of the United States and from time to time as they may be required to answer to any further proceedings and abide and perform any judgment which may be had or rendered therein in this cause, and that they will abide by and perform any order and judgment which may be rendered or affirmed against them in the Supreme Court of the United States; upon the execution and acceptance of said bonds of the respective defendants before and by said district court the defendants shall severally be discharged from further custody under the judgment and proceedings heretofore had in this cause pending the hearing of said writ of error or until the further order of the court.

It is further ordered that the marshal of the United States for the district of Indiana, after said service of citation, shall deliver a copy of this order certified by the clerk of the circuit court of the United States for the district of Indiana, under the seal of said court to the warden of the Northern States prison of the State of Indiana, which shall be sufficient authority for said warden to deliver said defendants into the custody of said marshal, under this order.

A copy of this order shall be attached to the record sent to the Supreme Court of the United States, and this order shall also be entered of record.

Given under my hand this June 13th, 1894.

JOHN M. HARLAN,
Associate Justice of the Supreme Court of the United States.

266 UNITED STATES OF AMERICA, } ss:
District of Indiana, }

I, Noble C. Butler, clerk of the circuit court of the United States within and for the district aforesaid, do hereby certify that the

above and foregoing is a full and true copy of the order in the cause above entitled, entered in said court on the 14th day of June, 1894, as fully as the same remains upon the records now in my office.

Witness my hand and the seal of said court at Indianapolis, in said district, this 16th day of June, A. D. 1894.

[Seal Circuit Court of the United States, District of Indiana.]

NOBLE C. BUTLER, *Clerk.*

Endorsed on cover: Case No. 15,625. Indiana D. C. U. S. Term No., 741. Francis A. Coffin and Percival B. Coffin, plaintiffs in error, *vs.* The United States. Filed July 6, 1894.

Supreme

No. [illegible]

FRANCIS A. CONNER and
PERCIVAL B. CONNER,
Plaintiffs in Error,
v.
THE UNITED STATES.

STATEMENT OF FACTS AND
ERRORS, WITH
TEXT, CITATIONS

Supreme Court of the United States.

OCTOBER TERM, 1894.
No. 741.

FRANCIS A. COFFIN AND PERCIVAL B. COFFIN

vs.

THE UNITED STATES.

STATEMENT OF FACTS.

The Indianapolis National Bank suspended payment on the 25th day of July, 1893, very badly insolvent. The face value of its assets at that time amounted to about two millon one hundred thousand dollars ($2,100,000.00.) Of these assets the receiver gave it as his opinion that a little less than nine hundred thousand dollars ($900,000.00) were good assets. Trans., pp. 96 and 97.

Among the customers of said bank were The Indianapolis Glue Works, The Indianapolis Curled Hair Works, and The Indianapolis Cabinet Company. In the two former, Mr. Theodore P. Haughey, the presi-

dent of the bank, and his sons, were largely interested, and those two concerns owed the banks something over five hundred thousand dollars ($500,000.00), with very trifling assets.

The indebtedness of The Indianapolis Cabinet Company to the bank primarily, and as drawer and endorser, was a little over three hundred and fifty thousand dollars ($350,000.00) at that time, with assets claimed, by its managers, to be nearly double that amount, and, according to evidence introduced by them, aggregating something over five hundred thousand dollars ($500,000.00).

The receiver of the bank, on the other hand, contended that the assets of The Indianapolis Cabinet Company were not worth more than about fifty per cent. (50%) of its liabilities.

The liabilities of the cabinet company to other parties than the bank were comparatively small, not over thirty or forty thousand dollars ($30,000.00 or $40,000.00).

Said Haughey was at all times the largest stockholder of the bank and never was in any way interested in said cabinet company, nor were said Coffins ever interested in the bank. Trans., p. 106.

The plaintiffs in error, Francis A. and Percival B. Coffin, were, respectively, the president and secretary of the Indianapolis Cabinet Company, and its principal managers.

Albert S. Reed, who was indicted with them, was the treasurer of the cabinet company.

That company had been in business about thirteen years, its headquarters and manufactory being at Indianapolis, and its business was the largest of any desk company in the world, its sales being scattered over, not only the entire United States, but very extensively in foreign countries. It had always done its entire business

through the Indianapolis National Bank, and its indebtedness had grown from a small amount at the time it started to the amount above stated. Its deposits in said bank during its business life aggregated over five million dollars ($5,000,000.00). It had from time to time executed mortgages, or deeds of trust, to the president of the bank upon its entire property, to secure its indebtedness to the bank, there being a mortgage for two hundred and fifty thousand dollars ($250,000.00) to secure bonds to that amount which were pledged to the bank at the time of the failure.

A number of collateral corporations had been organized by the managers of The Indianapolis Cabinet Company for the purpose, as they alleged, of facilitating their business at Boston, New York, London, Richmond, Indiana, and some other places, and a large part of the loans obtained from the bank had been obtained by discounting the paper of these corporations.

On behalf of the government it was claimed that these corporations were not *bona fide* business institutions, but were corporations organized simply to aid the cabinet company in procuring larger lines of credit from the bank.

Theodore P. Haughey was, at the time of its failure, and ever since its organization, more than twenty-five years ago, had been, the president of the Indianapolis National Bank. For many years last past he had been the sole manager of the bank. His board of directors left the entire business of discounts, loans, etc., to him. His cashier was a mere clerk, and Theodore P. Haughey was the bank.

The moneys and credits obtained by The Indianapolis Cabinet Company from the bank were obtained, in part, upon its own notes, and in part upon drafts made by it upon these collateral corporations and other persons and corporations with which it did business, as

to the latter there being no dispute that the paper was drawn and discounted in the usual course of business, and paper of the latter kind constituted, of course, much the larger part of that discounted by the bank.

The plaintiffs in error, with Reed, were indicted for aiding and abetting Haughey in the misapplication of the moneys, funds, and credits of the bank, in making false entries upon the books of the bank and in makfalse reports to the comptroller. The counts in relation to false reports, however, were nollied before the case was finally submitted to the jury.

The theory of the government's case, as before stated, was that these collateral corporations were shams; that much of the paper procured to be discounted for the use of the cabinet company was not *bona fide* paper; that, therefore, the money and credits obtained by the cabinet company by means thereof were willfully misapplied, and that the Coffins and Reed aided and abetted this misapplication; also that the entries made in the books in relation to such transactions were false entries, and that they were also guilty of aiding and abetting in the making of such false entries. It was, however, conceded by the government that the entries correctly stated said transactions as they had actually occurred.

The theory of the defendants, on the other hand, was that all the moneys, funds and credits obtained from the bank were *bona fide* loans, within the competency of Mr. Haughey, as the manager of the bank, to make; that they were obtained by the officers of the cabinet company in good faith with a view to the due prosecution of their business, and that there was no intent on their part to defraud the bank or to deceive any officers or parties interested in the premises.

The cabinet company failed shortly after the failure of the bank in July, 1893.

ASSIGNMENT OF ERRORS.

We have assumed that Rule 35, requiring the assignment of errors to be filed in the court below, and to be printed in full in the transcript, modifies the old rule requiring a full assignment of errors in the brief. Such full assignment of errors is found in the transcript, commencing on page 148 and extending to page 173. Of course, much the larger part of such assignment is made up by the copies of instructions there set out.

For the convenience of the court, however, we submit here a succinct statement or abstract of the errors relied upon in our printed argument, or brief, now on file in this court, as said errors are assigned in the transcript.

1. (Trans., p. 149.) That the court below erred in overruling the defendants' motion in arrest of judgment, that is, as to the counts from 1 to 16, inclusive, and the counts from 37 to 46, inclusive, the first sixteen being counts for misapplication, and the other ten for making false entries upon the books. Under this assignment, the sufficiency of each count of the indictment is assailed.

2. The court erred in letting the witness Edward Hawkins testify that the assets were "scheduled and forwarded to the department, as good assets, $878,946.04." Trans., p. 149.

3. The court erred in permitting the same witness to testify as to the assets of the Wooten Office Desk Company purely from hearsay and not of his own knowledge. Trans., p. 149.

4. The court erred in permitting the same witness to testify as to the amount of the indebtedness of the Indianapolis Cabinet Company, and in refusing to let the witness be then and there cross-examined in relation to the same. Trans., p. 149.

5. Error of the court in permitting the government to give testimony under any count of the indictment, because:

a. None of said counts alleged that the defendants knew that said Haughey was president of the bank.

b. Because neither of said counts alleges that the defendants had any knowledge of the alleged wrongful acts of Haughey.

c. Because neither of said counts alleged the actual conversion of the moneys, funds or credits of the bank, but only an intent to convert.

d. Because neither of said counts alleged that the defendants were officers, agents, or in any way connected with the bank.

e. As to the first count, because it failed to aver the value of a pound sterling.

f. That the intent charged against Haughey was not the same as that charged against the defendants. Trans., p. 150.

g. Because the transactions complained of were loans, and such transactions were not within the denunciation of the statute.

6. The trial court erred in saying in the presence of the jury during the trial, "It would be a sorry state of the law if a corrupt banker, standing on the inside of the counter, could loot the bank in favor of criminals who stood on the outside of the counter, and there was no law to reach them."

7. Error in allowing in evidence a check for $5,802.84 when said count called for a check for 1,194 pounds sterling.

8. Error in the statement by the trial court, in the presence of the jury, on the cross-examination of the witness Horton, that, in his (the court's) judgment the Wooten Office Desk Company hadn't a cent's interest in the business or property held in its name at

Richmond or at Indianapolis, and in refusing to permit the witness to be cross-examined touching the same by the defendants.

8½. Error in overruling defendants' motion, at the conclusion of the government's testimony, that the government be required to elect what particular transaction it would rely upon as its substantive charge under the general counts 17 to 36 inclusive.

9. Error in refusing to give the 2d instruction asked by defendants, to the effect that the precise act charged must be proven. Trans., p. 151.

10. Error in refusing to give defendants' 3d instruction, to the effect that the statute must be strictly construed and the offense proven strictly as charged.

11. Error in refusing to give defendants' 4th instruction, to the effect that each count must stand as if it were an independent indictment.

12. Error in refusing to give defendants' 5th instruction to the effect that a charge of drawing a check for 1,194 pounds sterling is not sustained by proof of a check for $5,802.84.

13. Error in refusing to give defendants' 6th instruction, to the effect that it was necessary to be charged that the defendants knew Haughey was president of the bank, and that averment being absent, the verdict must be not guilty. Trans., p. 152.

14. Error in refusing to give defendants' 7th instruction, to the effect that if in what Haughey did he intended not to defraud the bank, but did it with intent to serve the bank, the verdict should be not guilty.

15. Error in refusing to give defendants' 8th instruction, to the effect that if at the time credit was given its refusal would have caused failure of the bank, and Haughey, in good faith, so believed and gave the credit with the *bona fide* hope and intention of saving the bank, and not with the intent to injure the bank or

any one else, or to deceive the bank examiner, the verdict should be not guilty.

16. Error in refusing to give defendants' 9th instruction, to the effect that aiders and principal must act with common intent, and if Haughey made additional loans because to refuse was in his opinion likely to ruin the bank, the unlawful intent is not proved.

17. Error in refusing to give defendants' 10th instruction, to the effect that to warrant a conviction it must be proved that Haughey did the particular acts charged with the precise intent charged and that defendants aided and abetted with like intent. Trans., p. 153.

18. Error in refusing to give the defendants' 11th instruction, to the effect that, if the moneys, funds and credits charged to have been misapplied were in fact *bona fide* loans, though upon insufficient security, verdict upon the counts charging misapplication must be not guilty. , Trans., p. 154.

19. Error in refusing to give defendants' 12th instruction, to the effect that if upon the proof it appears that the paper, upon which loans were made to the cabinet company, was of real and substantial value, and the bank is now seeking to collect such paper out of the assets of the cabinet company, then said paper can not be treated as worthless, and the loans wholly fictitious, and the jury is authorized to base a verdict upon the theory that such transactions were *bona fide* loans.

20. Error in refusing to give defendants' 13th instruction, to the effect that the question whether such transactions were *bona fide* loans or shams was a question of fact for the jury.

21. Error in refusing to give defendants' 14th instruction, to the effect that in determining the intent of Haughey, the jury should take into consideration

his relations to the bank as officer and share-holder, and whether any motive for defrauding the bank, or deceiving any bank officer or examiner is proven, and that, if upon all the proof it does not appear that Haughey was in any way to be benefited by the loans or advances, and that no motives for wrongful action on his part are shown, these circumstances would tend to show an innocent intent, and *vice versa*. Trans., p. 155.

22. Error in refusing to give defendants' 15th instruction, to the effect that a mere loaning of more than ten per cent. of the capital stock of the bank is not made a crime by the statute, and proof of this alone does not sustain a charge of misapplication. It must also be shown that the loan was made with the criminal intent.

23. Error in refusing to give defendant's 16th instruction, stating the counts charging false entries and instructing that for such false entries to be within the denunciation of the statute they must have been made with the specific intent to deceive or defraud as alleged, and that, in considering whether such intent is proved, the jury may consider the relations of Haughey to the bank, as officer and stockholder, and whether he was receiving or was to receive any benefit from such false entries, or had any motive to make the same; that proof of such benefits or motives would tend to sustain the charge, and *vice versa*. Trans., p. 156.

24. Error in refusing to give defendants' 17th instruction, to the effect that the specific intent to injure the bank or to deceive the bank examiner must be proven as to the defendants in connection with the charge of false entries in order to sustain a conviction with relation thereto. Trans., p. 157.

25. Error in refusing to give defendants' 18th instruction, to the effect that a false entry is an entry of

something which did not occur, or of a transaction falsely recorded, but that a true entry of a wrongful transaction is not a false entry within the meaning of the statute.

26. Error in refusing to give defendants' 19th instruction, to the effect that, if Mr. Haughey as president of the bank received and discounted paper offered by the cabinet company which, by reason of the insolvency of the parties ought not to have been received, and gave credit therefor, the making of the book entries correctly recording the transaction was not a false entry; that it was the duty of the officers of the bank, whatever may have been the transaction, to correctly record the same, and such correct record is not a false entry. Trans., p. 158.

28. Error in refusing to give defendants' 21st instruction, to the effect that, in order to warrant a conviction of aiding and abetting in the making of false entries it must be proven that the defendants had knowledge of the making of such false entries and that they aided and abetted the making of the same with the like criminal intent as acted upon by Haughey; that proof simply that the defendants presented the paper covered by a false entry and received credit for the same is insufficient unless knowledge of or connection with the making of the entry is brought home to them. Trans., p. 159.

29. Error in refusing to give defendants' instruction No. 22½, to the effect that if defendants, upon request of Haughey, furnished paper of parties possessed of little or no means sufficient to balance their account at any time and that Haughey caused the same to be entered upon the books, giving credit therefor, that was not a false entry.

30. Error in refusing to give defendants' 22d instruction, to the effect that all the counts except four

charge that the cabinet company was insolvent, and that Haughey knew of such insolvency, and that it was essential to the sustaining of any of these counts that such knowledge on the part of Haughey of said insolvency should be proven. Trans., p. 160.

The 31st, 32d, 33d, 34th, 35th, 36th, 37th, 38th and 39th assignments of error relate to Instructions 23, 24, 25, 26, 27, 28, 29, 30 and 31, each of which instructions relates to an averment in the indictment to the effect that the names of certain parties injured, defrauded or deceived were to the grand jurors unknown, or that a more particular description of moneys, funds and credits was to the grand jurors unknown, or that moneys were paid for the use and benefit of persons to the grand jurors unknown, and kindred averments. An assignment of error attacks the refusal to give each of these instructions, but, as they are discussed together in the brief, attention is called to them as errors in the same way here. Trans., pp. 160–163.

40. Error in refusing to give defendants' 32d instruction, to the effect that, while an over-draft is not an approved method of making a loan, yet the mere proof that Haughey permitted such over-draft would not be sufficient to show a misapplication of the funds of the bank.

41. Error in refusing to give to the jury the defendants' 33d instruction, to the effect that, as the statute makes it an offense to misapply either the moneys, funds or credits of the bank, and each of the counts for misapplication alleges a misapplication of the moneys, funds and credits, therefore, each such count is bad for duplicity and no conviction thereon could be had.

42. Error in refusing to give defendants' 34th instruction, to the effect that proof that the Indianapolis Cabinet Company, or its subsidiary corporations made

drafts for moneys upon parties from whom no money was due, will not, of itself, warrant the conclusion that such drafts were either wholly fictitious or fraudulent, if it should be found that such drafts were drawn for accommodation by an understanding between drawer and drawee; and further that, if such paper was secured, either in whole or in part, by bonds or other collateral, or was of substantial value, this fact will be a further circumstance tending to show good faith in the transactions. Trans., p. 164.

43. Error in refusing to give defendants' 35th instruction, to the effect that, if the jury should find that moneys were advanced by the bank to the cabinet company to assist in starting a branch in London under the name of the Indianapolis Desk Company, or to pay drafts of the Indianapolis Cabinet Company on said desk company, with the understanding that the moneys so advanced were to be returned, and they were in fact returned to the bank, such facts will not warrant a finding of misapplication or justify a conviction for aiding and abetting such transactions.

44. Error in refusing to give defendants' 36th instruction, to the effect that a charge of misapplication of the credits of the bank is not sustained by proof merely that the bank gave the cabinet company credit to which it was not entitled, unless it appears that moneys, funds or resources of the bank were withdrawn as the result, as, for instance, the giving of credit upon mere renewal paper upon which nothing was withdrawn from the bank.

45. Error in refusing to give Instruction 36½ asked by defendants, to the effect that, as no specific charge in any count of the indictment is based upon any transaction relating to the Tufts Cabinet Company, no such charge or proof can be considered as a substantive charge of wrong-doing under any count of the

indictment, unless it is shown that the grand jury at the time of the indictment had no knowledge, or, by the exercise of reasonable diligence, could have had no knowledge of such transaction. Trans., p. 165.

46. Error in refusing to give defendants' 37th instruction, to the effect that, as there can be a conviction upon no charge of wrongdoing occurring more than three years before the date of the indictment, the evidence must separate such transactions from those occurring within the three years, and, in the absence of such separation, there can be no conviction upon such intermingled transactions.

48. Error in refusing to give defendants' instruction 38½, to the effect that, as there is no charge in any count of the indictment based upon any transactions of the Tufts Cabinet Company, evidence in relation thereto can only be considered as throwing light upon the intent with reference to other charges. Trans., p. 166.

49. Error in refusing to give defendants' 39th instruction, to the effect that, if the evidence raises a reasonable doubt whether any of the paper discounted by the bank was discounted in consideration of the fact that the property of the cabinet company upon which the bank held a mortgage was about to be shipped from the factory to the parties liable upon said notes or drafts other than the said cabinet company, for the purpose of putting the bank in the position of a creditor of such consignee, then it can not be found that such paper was executed without consideration or that it was purely accommodation paper, and its acceptance would not be a willful misapplication of the funds of the bank. Trans., p. 167.

53. Error in refusing to give defendants' 43d instruction, to the effect that the jurors must not only have a conscientious belief in the guilt of the accused,

but they must have a conscientious belief that there is no reasonable doubt of their guilt. Trans., p. 168.

54. Error in refusing to give the defendants' 44th instruction, as follows :

"The law presumes that persons charged with crime are innocent until they are proven by competent evidence to be guilty. To the benefit of this presumption the defendants are all entitled, and this presumption stands as their sufficient protection unless it has been removed by evidence proving their guilt beyond a reasonable doubt."

56. The court erred in giving to the jury the part of his instructions embraced in Assignment No. 56, wherein he tells the jury that Congress has departed from its usual custom in enacting this statute, by fixing a minimum penalty, and that the statute is a protest against allowing our judgments to be controlled by sympathy for fallen pride and shipwrecked lives.

57. The court erred in giving the part of his instructions embraced in Assignment No. 57 (Trans., p. 169), wherein he tells the jury that deposits in banks are trust funds, the scanty savings of the poor, as well as the accumulations of the rich, and that no officer of a bank has a right to make loans to parties of doubtful solvency, or upon doubtful security, and no officer of a bank has a right to discount paper, except it be drawn against actually existing values, and unless he believes such paper to be the actual equivalent of a like amount of money.

60. The court erred in giving to the jury as a part of his instructions the following :

"If, however, there are any willful misapplications shown by the evidence which are not covered by the special and specific counts, they may be included under the general counts, and a verdict rendered thereon accordingly."

62. The trial court erred in giving to the jury the part of his instructions embraced in Assignment No. 62 (Trans., p. 170), wherein he tells the jury that, if Theodore P. Haughey, as president of the bank, and with intent to injure and defraud said bank, did unlawfully and willfully misapply the moneys, funds and credits of said bank by cashing or paying or causing to be cashed or paid checks drawn upon it by said cabinet company when said cabinet company had no funds or credits on deposit against which to draw, and without authority from its board of directors, he has committed the offenses of willful misapplication charged and described in the several counts relating to that subject; and in giving to the jury the part of his instructions covered by Assignment No. 63, wherein he tells the jury that, if the defendants with intent to injure and defraud the bank, aided and abetted Haughey, knowing him to be president of the bank, in unlawfully and willfully misapplying the money, funds and credits of the bank, as charged and described in the several counts of the indictment, they were guilty as charged in said counts.

64. The court erred in giving to the jury the part of his instructions covered by Assignment of Errors No. 64, to the effect that the defendants were guilty, if with intent to injure the bank they aided and abetted Haughey, knowing him to be president of the bank, in wilfully misapplying the moneys, etc., of the bank as described in the several counts relating to that subject.

69. The court erred in giving to the jury the part of his instructions covered by Assignment No. 69, to the effect that a credit upon the books of the bank to be valid and to establish the relation of debtor and creditor must represent value received by the bank in the shape of money or what is honestly believed to be the

equivalent of money. It must represent a *bona fide* indebtedness to the bank.

72. The court erred in giving to the jury the part of his instructions covered by Assignment No. 72, as follows:

"Hence, if the natural and ordinary consequences of the acts of Haughey and the defendants, as shown by the evidence, were to injure and defraud the bank, or to deceive and defraud any officer of the bank, you will be authorized to find that such was their intent, even though they may have been injured thereby."

73. The court erred in giving to the jury the part of his instructions covered by Assignment No. 73, in the following words:

"I do not wish to be understood as meaning that the intent to injure, deceive or defraud is conclusively established by simple proof of the doing of the prohibited acts which result in injury. What I do mean is this: That when the prohibited acts are knowingly and intentionally done, and their natural and legitimate consequences are to produce injury to the bank, or to benefit the wrong-doer, the intent to injure, deceive or defraud is thereby sufficiently established to cast on the accused the burden of showing that their purpose was lawful and their acts legitimate." Trans., p. 172.

75. The court erred in giving to the jury the part of his instructions covered by Assignment No. 75, to the effect that, if after weighing all the proofs, and looking only to the proofs, the jury impartially and honestly entertain a belief that the defendants may be innocent of the offenses charged against them, they are entitled to the benefit of that doubt, and you should acquit them.

76. The court erred in giving to the jury the part of his instructions covered by Assignment No. 76, to the effect that it was shown by the proof that Haughey as

president had entire custody, control and management of the affairs of the bank, and that the directors of the bank gave him no authority to do or commit the various criminal acts charged against them in the indictment.

If it should be suggested that the assignments of error in this case are numerous, the answer is very obvious. The defendants were tried upon an indictment consisting of fifty counts, involving transactions of many millions of dollars, running through a period of about thirteen years. In such a case it can hardly be said that a request for instructions equal in number to the counts in the indictment, or of assignments to the number shown in this record, are out of reason.

W. H. H. MILLER,
FERDINAND WINTER,
JOHN B. ELAM,
Attorneys for Plaintiffs in Error.

THE LAW ASSOCIATION
—OF—
PHILADELPHIA.

IN THE

Supreme Court of the United States.

October Term, 1894.

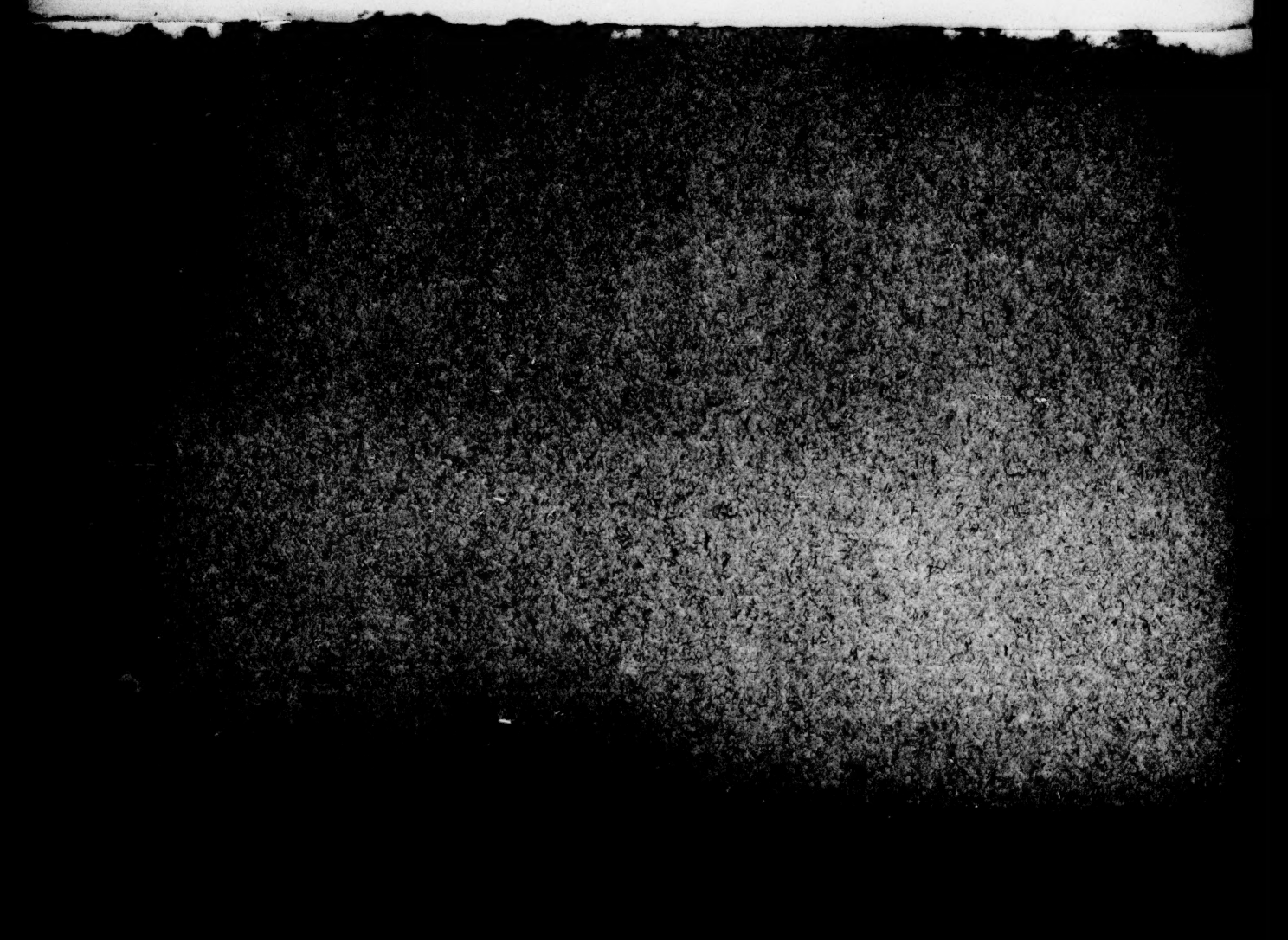
No. 741.

FRANCIS A. COFFIN AND PERCIVAL B. COFFIN, Plaintiffs in Error, vs. THE UNITED STATES.	Error to the District Court of the United States for the District of Indiana.

BRIEF FOR PLAINTIFFS IN ERROR.

W. H. H. MILLER,
FERDINAND WINTER,
JOHN B. ELAM,
Attorneys for Plaintiffs in Error.

Baker-Randolph Co., Printers, Indianapolis.



IN THE

Supreme Court of the United States.

FRANCIS A. COFFIN AND PERCIVAL B. COFFIN
vs.
THE UNITED STATES.

Error to the District Court of the United States for the District of Indiana.

BRIEF FOR PLAINTIFFS IN ERROR.

This is a prosecution by indictment based upon Section 5,209 of the Revised Statutes of the United States. That section in full reads as follows:

"Every president, director, cashier, teller, clerk or agent of any association, who embezzles, abstracts or willfully misapplies any of the moneys, funds, or credits of the association; or who, without authority from the directors, issues or puts in circulation any of the notes of the association; or who, without such authority, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage, judgment or decree; or who makes any false entry in any book, report, or statement of the association, with intent, in either case, to injure or defraud the association, or any other company, body politic or corporate, or any individual person, or to deceive any officer of the association, or any agent appointed to examine the affairs of any such association; and every person who with like intent aids or abets any officer, clerk or agent in any vio-

lation of this section, shall be deemed guilty of a misdemeanor, and shall be imprisoned not less than five years nor more than ten."

So much of the section as is directly involved in this case, is as follows:

"Every president, director, cashier, teller, clerk or agent of any association who embezzles, abstracts, or willfully misapplies any of the moneys, funds or credits of the association; * * * * or who makes any false entry in any book * * * * of the association, with intent, in either case, to injure or defraud the association or any other company, body politic or corporate, or any individual person, or to deceive any officer of the association, or any agent appointed to examine the affairs of any such association; and every person who, with like intent, aids or abets any officer, clerk or agent in any violation of this section, shall be deemed guilty of a misdemeanor, and shall be imprisoned not less than five years nor more than ten."

The plaintiffs in error, with one Reed, were indicted under the clause for aiding and abetting.

The indictment as originally drawn, as it stood throughout the trial, and as it appears in the record, comprised fifty counts. Of these, the first thirty-six and the forty-seventh were based upon alleged misapplication of the funds of the bank.

The 37th, 38th, 39th, 40th, 41st, 42d, 43d, 44th, 45th and 46th counts were based upon alleged false entries in the books of the bank.

The 48th, 49th and 50th counts rested upon alleged false reports made to the comptroller of the currency.

Before the retirement of the jury, the counts last referred to, namely, those charging the making of false reports to the comptroller, as well as the 47th count, being a count for misapplication, were withdrawn from the consideration of the jury.

Upon the other forty-six counts a verdict of guilty was rendered, but, for reasons hereafter to be stated, no judgment was entered upon the counts from 17 to 36, both inclusive, so that the judgment and sentence, as ultimately

passed upon the plaintiffs in error, and as they now stand, rest upon the first 16 counts, which are all based upon alleged misapplication of funds; and the ten counts, 37 to 46, both inclusive, based upon alleged false entries.

The district court suspended sentence as to the defendant Reed, so that the Coffins only are prosecuting this writ of error.

After the verdict, and before judgment and sentence, a motion in arrest of judgment was overruled. This action of the district court presents the first error to which the attention of this court is asked. The motion in arrest, and the action of the court thereon, appear in the transcript at page 90.

I.

We confidently maintain that there is not a good count in the indictment. At the risk of seeming to present matters which are presumably familiar to the court, attention is called to some decisions showing the strict rules of construction applicable to a question of this kind.

In the United States *v.* Cruikshank, 92 U. S., on page 557, the Chief Justice, speaking for the court, used this language:

"In criminal cases, prosecuted under the laws of the United States, the accused has the constitutional right 'to be informed of the nature and cause of the accusation.' Amend. VI. In U. S. *v.* Mills, 7 Peters 142, this was construed to mean that the indictment must set forth the offense 'with clearness and all necessary certainty to apprise the accused of the crime with which he stands charged;' and in U. S. *v.* Cook, 17 Wall. 174, that 'every ingredient of which the offense is composed must be accurately and clearly alleged;' it is an elementary principle of criminal pleading that where the definition of an offense, whether it be at common law or by statute, 'includes generic terms, it is not sufficient that the indictment shall charge the offense in the same generic terms as in the definition, but it must state the species; it must descend to particulars.' 1st Arch. Cr. Pr. & Pl. 291. The object of the indictment is, first, to furnish the accused with such a description of the charge

against him as will enable him to make his defense and to avail himself of his conviction or acquittal for protection against a further prosecution for the same cause, and, second, to inform the court of the facts alleged, so that it may decide whether they are sufficient in law to support a conviction, if one should be had. For this, facts are to be stated, not conclusions of law alone. A crime is made up of acts and intent, and these must be set forth in the indictment with reasonable particularity of time, place and circumstances.

"It is a crime to steal goods and chattels; but an indictment would be bad that did not specify with some degree of certainty the articles stolen. This, because the accused must be advised of the essential particulars of the charge against him, and the court must be able to decide whether the property taken was such as was the subject of larceny. So, too, it is in some States a crime for two or more persons to conspire to cheat and defraud another out of his property; but it has been held that an indictment for such an offense must contain allegations setting forth the means proposed to be used to accomplish the purpose. This, because, to make such a purpose criminal, the conspiracy must be to cheat and defraud in a mode made criminal by statute; and as all cheating and defrauding has not been made criminal, it is necessary for the indictment to state the means proposed, in order that the court may see that they are in fact illegal. State *v.* Parker, 43 N. H. 83; State *v.* Keach, 40 Vt. 118; Alderman *v.* The People, 4 Mich. 414; State *v.* Roberts, 34 Me. 32. ' In Maine it is an offense for two or more to conspire with the intent unlawfully and wickedly to commit any crime punishable by imprisoment in the State prison (State *v.* Roberts); but we think it will hardly be claimed that an indictment would be good under this statute, which charges the object of the conspiracy to have been 'unlawfully and wickedly to commit each and every, all and singular, the crimes punishable by imprisonment in the State prison.' All crimes are not so punishable. Whether a particular crime be such an one or not, is a question of law. An accused has, therefore, the right to have a specification of the charge against him in this respect, in order that he may decide whether he should present his defense by motion to quash, demurrer or plea; and the court, that it may determine whether the facts will sustain the indictment."

In United States *v.* Gooding, 12 Wheat., on page 477, speaking of the Act of 1818, for the suppression of the slave trade, it is said by this court :

"This is a penal act, and is to be construed strictly, that is, with no intendment or extension beyond the import of the words used."

In that case it was accordingly held that, under a statute denouncing as guilty of a crime any person who should fit out a ship, with intent to employ such ship in the slave trade, the crime was not made out by proof that the defendant fitted out said ship with intent that it should be employed in such trade; that the statute was directed against the person who fitted out the vessel with intent to use the same in said trade himself, and did not cover the case of one who should fit out such vessel with the intent or purpose that it should be used by other parties.

In The Commonwealth *v.* Bean, 14 Gray, page 52, in an opinion written by Chief Justice Shaw, it is said:

"If, as in civil cases, an insufficient statement of a case might be helped by a verdict, it might obviate this objection. But a different and more exact rule prevails in criminal cases, in which it is required, as well by the common law as by the constitution, that a sufficient case must be stated to bring the accused within the law before he is called on for his answer.

Guided by these requirements of criminal pleading, let us look at this indictment.

In the first place, it will be noticed that in no one of the counts of the indictment is there a single sentence or word showing any connection or relation between the defendants and the bank, or its president, Mr. Haughey, or The Indianapolis Cabinet Company, or any other person or party whatsoever, except the naked averment that the defendants aided and abetted Haughey in the alleged wrongful acts. So far as stating a case upon the face of the indictment, the names of any other three men in the United States might be substituted for those of the two Coffins and Reed, and the legal effect of the indictment would not be changed.

The indictment fails in every count to give to the defendants any information, or even any intimation of the

acts to be relied on to criminate them. It is not averred that they had any connection with or control over the Cabinet Company, for whose benefit it is alleged the wrongful acts of Haughey were committed, nor that in any way they derived or could derive any benefit from, or had any motive for, participating in said wrongful acts. In short, except the bare mention of their names, the plaintiffs in error are total strangers to every averment of the indictment and to every wrongful act therein charged.

It is to be borne in mind that the offense with which the plaintiffs in error are charged is an independent, statutory crime. There are, of course, no common law offenses against the United States.

But this offense is not accessorial and, hence, not subject to the rule governing pleading as to such offenses.

The Slave Trade Act of 1818, heretofore referred to, provided that "every person or persons so building, fitting out, equipping, loading or otherwise preparing or sending away, or causing any of the acts aforesaid to be done, with intent to employ such ship or vessel in such trade or business, after the passing of this act, contrary to the true intent and meaning thereof, *or who shall in anywise be aiding or abetting therein, shall severally on conviction thereof by due course of law forfeit*," etc.

With reference to that statute, in United States *v.* Gooding, *supra*, on page 475, this court, speaking through Mr. Justice Story, says:

> "We do not consider that the terms 'aid' and 'abet,' used in this statute, are used as technical phrases belonging to the common law, because the offense is not made a felony and, therefore, the words require no such interpretation. The statute punishes them as substantive offenses, and not as accessorial, and the words are, therefore, to be understood as in the common parlance, and import assistance, co-operation and encouragement."

This being, then, an independent, statutory offense, we ask how an indictment which fails to give to the party in-

dicted any information whatever as to the nature of the acts charged against him meets the requirement of the sixth amendment to the constitution, that "the accused shall have a right to be informed of the nature and cause of the accusation."

If the offense were deemed accessorial and the rules applicable to such a case were to guide the proceedings, then the defendants charged as accessory would not be without some protection, since they could only be convicted after the trial and conviction of their principal; but, standing under a charge of a distinct and independent crime, liable to trial without reference to him whom they are charged with aiding and abetting, the defendants, if this indictment is good, are put upon trial upon charges formulated against another party, and utterly in the dark as to the particular cause for which they are to be branded as felons and deprived of their liberty. Nay, more, in this very case the trial and acquittal of Haughey for the very acts alleged against him in this indictment would be wholly irrelevant, if pleaded in bar by the plaintiffs in error as aiders and abettors. It seems to us that to hold any count of this indictment good against this objection is to nullify the provision of the sixth amendment above quoted. Under such a rule it is not only possible, but easily practicable, for Congress to so frame all penal statutes against offenses committed by two or more persons that all, except one of such alleged offenders, may be indicted and put upon trial without any information in the indictment as to the nature and cause of their accusation.

It will hardly be contended that a charge of fraud against a party in an indictment should be less specific than in an ordinary complaint for damages. Yet we suppose no one would contend that, in a civil action for damages against the Coffins, a complaint so general as this indictment, a complaint failing to connect them with the alleged wrongful transactions except in the most general

way, would be held sufficient. Surely, a motion to make more specific, or to furnish a bill of particulars, would be sustained by any court in such case.

We are not unmindful of the decisions of this court to the effect that "in an indictment for soliciting or inciting the commission of a crime, or for aiding or assisting in the commission of it, it is not necessary to state the particulars of the incitement or solicitation, or of the aid or assistance." U. S. *v.* Simmons, 96 U. S. 360; U. S. *v.* Gooding, 12 Wheat. 460. But those decisions do not, as we think, meet this question. Take Simmons' case, wherein it is held unnecessary to state the means whereby the defendant procured the unlawful acts to be performed, yet the decision falls far short of holding that it was unnecessary to state at all the relations of Simmons to the transactions. In every count of that indictment the relation of Simmons to the business of distilling was necessary to be alleged, and undoubtedly was alleged, as each of the sections of the statute, 3258, 3259, 3266 and 3281, is directed against persons occupying prescribed relations to such business. Those relations being thus alleged, it was held sufficient to charge the defendant with causing the unlawful acts to be done.

In the case at bar, however, the defendants, so far as appears, total strangers to every fact and circumstance connected with the indictment, are charged with aiding in the commission of the crime. It certainly would seem that the least that could be required in such a case would be a statement of facts which would so connect them with the transaction as to show a motive, an intent and a legal possibility of participation in the crime.

Thus, in Evans' case, 153 U. S. 584, the eighth count of the indictment was for aiding and abetting the cashier in the misapplication of the funds of the bank. It was averred, not merely that the cashier surrendered the note alleged to have been misapplied, to some third person, but

it was directly charged upon the defendant that he aided and abetted the cashier in surrendering the note to him, the said Evans, and for his own use, thus showing his relation to the transaction and his motive in the premises, yet the court was not unanimous in holding that even that indictment was sufficient.

In short, it is no less essential in an indictment against one as aider and abettor that the essential facts of the charge against him shall be stated so that he may take the opinion of the court upon their sufficiency as matter of law, than in the case of one charged as a principal offender.

United States *v.* Potter, 56 Federal Reporter 89.

United States *v.* Evans, *supra.*

The necessity for a statement of the facts constituting the crime, whether it be the direct act of the principal, or by aiding and abetting, is well stated, and the reasons upon which the rule is based and the authorities supporting the same are well presented in Bettilini's case, 1 Woods 654. That was an indictment for effecting and aiding to effect an entry of goods by paying less than the legal duties. It is there shown that the decision of this court in United States *v.* Mills, 7 Peters, does not sustain the proposition for which it is often cited, that indictments for misdemeanors need allege the offense only in the language of the statute. It is there said that in such case there is required "a certain description of the crime of which the defendant is accused, and a statement of the facts by which it is constituted, that the accused may know what crime he is called upon to answer; that the jury may be warranted in finding a verdict; and that the court may see such a definite offense upon the record; that the judgment and punishment which the law prescribes may be applied; that the defendant may plead a conviction or acquittal should he again be called to answer a charge for the same offense; and, I might add, that it may be impossible to convict an innocent person by dispensing with proof of the facts and

circumstances which constitute the crime. Chitty Criminal Law 172. The reasons for such specific charges are clearly stated in McLaughlin *v.* State, 45 Ind. 338."

Measured by this standard, the indictment against the plaintiffs in error in the case at bar must fall.

II.

Coming to the matter of particular averments, we maintain that each count of this indictment is bad because it fails to allege that the defendants aided and abetted Haughey, knowing him to be president of said bank. No one of the counts contains such imputation of knowledge. Of course, each count of the indictment must stand or fall by itself. Each count for misapplication specifies but a single transaction. Take, for instance, the second count: The charge is that Haughey misapplied $8,626.50, by causing said sum to be paid out of the funds of the bank upon a single check drawn by the Indianapolis Cabinet Company when the latter had no funds to its credit in the bank. Suppose, now, that all the facts averred in this count were proved, but that it were also proved that the defendants did not know that Haughey was president of the bank, but were informed by him, and believed, that he, as an independent capitalist, was providing the means for the payment of this check out of his own funds. Would any one pretend that, if it were also proved that the defendants, as officers of the Cabinet Company, received and used the money for that company, such proof would show that they were guilty of aiding and abetting Haughey, as president of the bank, in misapplying its funds? We submit that to aid and abet the president of a bank in misapplying its funds, the aider and abettor must know that he is such president; otherwise, they either act innocently, or, if they commit any wrong, it is not the wrong denounced by the statute.

It is claimed, however, that, this being a statutory offense, a misdemeanor, it is sufficient, as against the defendants, that the charge is formulated in the language of the statute, but such is by no means the universal, even if it is the general, rule. Upon this question we have direct authority in this court.

In United States *v.* Carll, 105 U. S. 611, the indictment was based upon Section 5431, which reads as follows:

"Every person who, with intent to defraud, passes, utters, publishes or sells any falsely made, forged, counterfeited or altered obligation or other security of the United States, shall be punished," etc.

Each count in the indictment alleged that the defendant "feloniously, and with intent to defraud the Bank of the Metropolis, which said bank is a corporation organized under the laws of the State of New York, did pass, utter and publish upon and to the said Bank of the Metropolis a falsely made, forged, counterfeited and altered obligation and security of the United States," etc. The defendant having been convicted, upon a certificate of division of opinion the case was submitted to this court, and Mr. Justice Gray, speaking for the court, says:

"In an indictment upon a statute, it is not sufficient to set forth the offense in the words of the statute, unless those words themselves fully, directly and expressly, without any uncertainty or ambiguity, set forth all the elements necessary to constitute the offense intended to be punished. And the fact that the statute in question, read in the light of the common law, and of other statutes on the like matter, enables the court to infer the intent of the legislature, does not dispense with the necessity of alleging in the indictment all the facts necessary to bring the case within the intent. U. S. *v.* Cruikshank, 92 U. S. 542. U. S. *v.* Simmons, 96 U. S. 360. Commonwealth *v.* Clifford, 8 Cush. 215. Commonwealth *v.* Bean, 11 Cush. 414. Commonwealth *v.* Bean, 14 Gray 52. Commonwealth *v.* Filburn, 119 Mass. 297. The language of the statute on which this indictment is founded includes the case of every person who, with intent to defraud, utters any forged obligation of the United States, but the offense at which it is aimed is similar to the

common law offense of uttering a forged or counterfeit bill. In this case, as in that, knowledge that the instrument is forged and counterfeited is essential to make out the crime; and an uttering, with intent to defraud, of an instrument in fact counterfeit, but supposed by the defendant to be genuine, though within the words of the statute, would not be within its meaning and object."

Hence, it was held that the indictment was bad for lack of the averment of guilty knowledge.

The cases cited in the foregoing opinion of Mr. Justice Gray clearly illustrate the proposition that it is often necessary to state in the indictment matters apparently not required by the words of the statute.

Thus, in Bean's case, 11 Cushing 414, the indictment was for malicious destruction of glass in a building. The statute was directed against every person "who shall maliciously or wantonly break the glass or any part of it in any building not his own," etc. The indictment followed the language of the statute, but it was held bad because it did not allege that the panes of glass so broken were a part of the building.

So in another case against a party of the same name in 14 Gray 52, the city ordinance provided that "no owner or person having the care of any sheep * * * cows or other grazing animals, shall permit or suffer the same to go at large or stop to feed on any street," etc. The indictment alleged that the defendant did permit and suffer his cows to stop and feed on a certain public street. It was held to be bad because plainly the statute was directed against permitting the animals to graze in the street, and, as it did not appear that these cattle were grazing, but that, for all that was averred, they might have been fed in boxes or troughs, the indictment was bad.

Filburn's case, 119 Mass. 297, is very directly in point. The statute under consideration in that case provided punishment for any person "who aids or assists a prisoner in escaping or attempting to escape from an officer or per-

son who has the lawful custody of such prisoner." The indictment alleged that the defendants did unlawfully aid and assist Patrick Gibbons, a prisoner lawfully arrested by one Plunket, a constable duly chosen and qualified, in the due and lawful execution of the duties of his office, to escape, etc. The indictment was held to be bad because it did not allege that the defendants knew of the official character of the constable and that his prisoner was in lawful arrest.

But this question seems to be completely covered by the recent decision of this court in Pettibone's case, 148 U. S. 197. That was a prosecution for conspiracy, under Section 5440, to obstruct the due administration of justice as denounced by Section 5399. That section reads as follows:

"Every person who corruptly, or by threats or force, endeavors to influence, intimidate, or impede any witness, or officer in any court of the United States, in the discharge of his duty, or corruptly, or by threats or force, obstructs or impedes, or endeavors to obstruct or impede, the due administration of justice therein, shall be punished by a fine of not more than five hundred dollars, or by imprisonment not more than three months, or both."

The indictment was based on alleged violations of an injunction ordered issued by the Circuit Court of the United States for the district of Idaho. The indictment failed to charge the defendants with knowledge or notice of the issue of the writ, or the pendency of the proceedings in the Circuit Court. This failure to charge notice was held fatal.

The Chief Justice, delivering the opinion of the court, having quoted approvingly the decision in United States *v.* Carll, *supra*, says:

"The construction that applies to the first branch of Section 5399 must be applied to the second; and if it were shown that the person accused should know that the witness or officer was a witness or officer, in order to a conviction of the charge of influencing, intimidating or impeding such witness or officer in the discharge of

his duty, so it must be necessary for the accused to have knowledge, or notice, or information of the pendency of proceedings in the United States Court, or the progress of the administration of justice therein before he can be found guilty of obstructing or impeding, or endeavoring to obstruct or impede the same."

And again, in the same opinion, it is said, on page 206:

"It seems clear that an indictment against a person for corruptly or by threats or force endeavoring to influence, intimidate or impede an officer or witness in a court of the United States in the discharge of his duty must charge knowledge or notice, or set out facts that show knowledge or notice on the part of the accused that the witness or officer was such."

In all such cases, in the absence of such notice or knowledge, the unlawful intent necessary to constitute the crime is lacking. There may be an unlawful intent, but, in order to bring the accused within the statute, the particular unlawful intent must be present. In the same case the Chief Justice says:

"It is insisted, however, that the evil intent is to be found, not in the intent to violate the United States statute, but in the intent to commit an unlawful act, in the doing of which justice was in fact obstructed, and that, therefore, the intent to proceed in the obstruction of justice must be supplied by a fiction of law. But the specific intent to violate the statute must exist to justify a conviction, and, this being so, the doctrine that there may be a transfer of intent in regard to crimes flowing from general malevolence has no applicability."

In the case at bar, Haughey could misapply the funds of the bank only as an officer of the bank, and, without knowledge of his official character, the accused could not aid him, as such officer, in the commission of such unlawful act.

Consistently with these decisions, how can one be guilty of aiding an officer of a bank to misapply the funds of the bank without knowing that he is such officer? We suppose no one would claim that proof of such lack of knowledge on the part of the alleged aider would not be a per-

fect defense; and, if so, then, according to all these decisions, it is essential that the indictment shall charge such knowledge. Precisely this conclusion has the sanction of this court in Northway's case, 120 U. S. 327.

In that case the president of the bank was indicted for aiding and abetting the cashier in the misapplication of the funds of the bank. The indictment showed the official character and relations of both to the bank and to each other. It did not, however, in terms aver that the president knew the official character of the cashier. On page 333 the court says:

> "We do not think it necessary in an indictment for this offense to charge any *scienter* more definitely. The acts charged against Fuller (the cashier) could only be committed by him by virtue of his official relation to the bank; and the acts charged against the defendant, likewise, could only be committed by him in his official capacity. Both are alleged to be officers of the same corporation. The knowledge that each had of the official relation of the other is necessarily implied in the co-existence of this official relation on the part of both toward the same corporation. It is as cashier that Fuller was aided and abetted by the defendant in the commission of his offense. This allegation necessarily imputes knowledge of his official character."

Thus, this court recognizes the necessity that knowledge of the official character of the principal shall be charged upon the aider and abettor. This, of course, may be done either in direct language or by a statement of facts that necessarily implies such knowledge, and beyond question the statement that both were officers of the same bank was sufficient to carry to each the knowledge of the official character of the other.

In the case at bar, however, as we have seen, there is no direct averment, statement of facts or implication, upon which knowledge by the Coffins of Haughey's relation to the bank can be predicated. As this objection goes to each count of the indictment, we think it must be fatal, and that the District Court erred in overruling the motion in arrest.

III.

Another consideration closely allied to the foregoing argument leads to the same conclusion. The aiding and abetting paragraph of the second count of the indictment, reads as follows: "And the Grand Jurors aforesaid, do further say that Francis A. Coffin, Percival B. Coffin and Albert S. Reed, at the district of Indiana aforesaid, did unlawfully, willfully and feloniously, and with intent to injure and defraud said association, on, to wit, the 20th day of February, in the year of our Lord one thousand eight hundred and ninety three, aid and abet the said Theodore P. Haughey, as aforesaid to wrongfully, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association, to wit, the sum of $8,626.50." Transcript, page 4. The language of the aiding and abetting paragraph of each count is substantially the same.

Attention is called especially to the words "aid and abet the said Theordore P. Haughey, as aforesaid to wrongfully, unlawfully," etc. As we have seen, it is only an officer or agent of the bank who can make a criminal misapplication of the funds, or make a criminal false entry within the meaning of this statute. The denunciation of the statute is only against a president, director, cashier, teller, clerk or agent of the bank. If authority were needed upon so plain a proposition, it is found in the Northway case supra, on page 313.

Of course, it follows that, within the meaning of this statute, no one except an officer or agent of the bank can be aided or abetted in such criminal act. Indeed, the language of the statute is "every person who, with like intent, aids or abets any officer, clerk or agent in any violation of this section." This being so, it again necessarily follows that a charge of aiding and abetting is not good which is not directed against one aiding or abetting such officer, clerk or agent. Now, in this case the charge

is that the defendants did "aid and abet the said Theodore P. Haughey, as aforesaid to wrongfully," etc., but nothing in the charge against the defendants is said as to his official character. So far as appears, the charge is that they aided him individually in these wrongful acts. If the words "as aforesaid" were held to be an adjective phrase, applying to Haughey, rather than an adverbial phrase, applying to the verb "misapply," still they would serve to identify the man and not the officer. Especially in view of the fact heretofore discussed, that the count nowhere charges the defendants with knowledge that Haughey was such officer, it seems to us clear that this charge must be construed to mean that the defendants, aided and abetted Haughey the individual, the same Haughey theretofore referred to, but not the officer or agent of the bank, in doing these unlawful acts.

It seems to us, however, that grammatical and logical construction alike require this phrase to be regarded as adverbial and as referring to the manner in which the misapplication was made; and, if so, then most clearly there is in this charge no reference to the officer, and the count is bad necessarily. The view that this is an adverbial phrase is further strengthened by the fact that the word "said" precedes the name Theodore P. Haughey. That "said" identifies the man, but not the officer; the phrase "as aforesaid" explains the manner of the wrongdoing. The word *as* is significant of manner.

IV.

The first count of the indictment is bad for two or three reasons special to itself.

The count charges that Theodore P. Haughey, as president of the bank, did misapply the moneys, etc., of the bank, with intent to defraud said bank, in a large sum, to wit, the sum of $5,802.84, "that is to say, the Indian-

apolis Cabinet Company of Indianapolis, Indiana, presented to the said bank and to the said Theodore P. Haughey, as such president thereof, a certain bill of exchange drawn by said Indianapolis Cabinet Company on the Indianapolis Desk Company of London, England, for the sum of 1,194 pounds sterling and due on June 1st, 1893, which said bill of exchange was received by said Theodore P. Haughey and placed to the credit of said Indianapolis Cabinet Company on the books of said bank, and said Indianapolis Cabinet Company thereupon drew its check for said sum on said bank, which said check was then and there paid by said bank under the direction of said Theodore P. Haughey; that the said Indianapolis Desk Company, of London, England, did not owe said Indianapolis Cabinet Company any sum whatever; that said Theodore P. Haughey failed and refused to send said bill of exchange forward for collection, whereby said sum was lost to said association; that said sum was so willfully misapplied to the use and benefit of the Indianapolis Cabinet Company as aforesaid." Transcript, pp. 2, 3.

First, attention is called to the averment that in the first instance it is alleged that the sum misappropriated was $5,802.84;

Next, it is alleged that this misappropriation was made by the cabinet company presenting to said bank and to Haughey its bill of exchange for 1,194 pounds sterling, which bill was received by Haughey and placed to the credit of the cabinet company upon the books of the bank.

Then, in the third place, it is averred that the cabinet company drew its check for *said sum* upon said bank, which was then and there paid under the direction of said Haughey.

Fourth, that the drawee, the Indianapolis Desk Company, of London, England, did not owe the said cabinet company at the time any sum whatever.

And, fifth, that Haughey failed and refused to send the bill forward for collection, whereby said sum was lost.

And, sixth, that the money was so misapplied for the use of the cabinet company.

Now, it is confidently asserted that neither the District Court, nor this court, can, as matter of law, find any connection between the sum of $5,802.84, alleged to have been misapplied, and the sum of 1,194 pounds sterling, the amount of the bill of exchange and the sum for which the check is alleged to have been drawn, because our courts can not take judicial notice of the value of a pound sterling. As a matter of fact, the pound sterling has not in this country a fixed value, but fluctuates with the rate of exchange continually. The courts can not even take judicial notice of the rate of exchange between the cities of our own country. If a note is made in Indiana for $5,000, payable with current rate of exchange on New York, the United States Circuit Court for Indiana, in assessing the damages upon such a note, must hear proof as to the rate of exchange, because such rate of exchange is variable. And much more is this true of foreign exchange. Indeed, courts can take judicial notice only of those things which are fixed and definite, and which are not open to doubt or question. Whatever a court knows judicially, it knows with absolute accuracy and with absolute certainty, and the fact is, for all purposes of the proceeding under consideration, an absolute verity. Of the value of a pound sterling, therefore, in the general commerce of the country, such value varying with the fluctuations of trade, it is impossible that the courts shall take notice. The connection and identity of these two sums, if they were identical, stated in dollars and pounds sterling, should have been averred in the pleading. The court can no more take judicial notice of the value of a pound sterling than it can take judicial notice of the currency of China, or Japan, or India. If it can take judicial notice of the value of a

pound sterling, then it would be bound to take judicial notice of the value of the Russian rouble, or copek; the German crown; the franc; and any and all other denominations of the currency of the world. That this can not be done has been expressly decided by the Supreme Court of Michigan.

In Kermott *v.* Ayer, 11 Michigan 181, a suit was brought to recover the amount of a promissory note for £190 9s. 11d., made payable in Canada West and due in August, 1856. Question arose as to the value of Canada currency, and the trial judge stated that "the value of a pound in Halifax currency was historically well known and established and in common use in Canada West to be of the value of $4 legal currency of the United States." Judge Campbell, speaking for the Supreme Court, says:

"In this case, the errors complained of are alleged to have arisen in regard to proof of the value of Canada currency and the rate of Canadian interest. The remarks made by the judge on the trial that these are such matters of historical knowledge as to be judicially known are not, we think, legally correct. These are provable facts unless recognized by our own laws, and a judge's knowledge of facts will not dispense with proof. The decision must be made upon the evidence. Had the decision in the case before us been based upon the historical knowledge referred to, we think the error would have been fatal."

The necessity for some other method of fixing the value of the pound sterling, than by the historical or judicial knowledge of the court has been recognized by Congress. Section 3565 of the Revised Statutes provides that:

"In all payments by or to the treasury, whether made here or in foreign countries, where it becomes necessary to compute the value of the sovereign or pound sterling, it shall be deemed equal to four dollars eighty-six cents and six and one-half mills; and the same rule shall be applied in appraising merchandise imported, where the value is, by the invoice, in sovereigns or pounds sterling, and in the construction of contracts payable in the sovereign or pound sterling; and this valuation shall be the par of exchange between Great Britain and the United States, and all contracts made after

the 1st day of January, 1874, based on an assumed par of exchange with Great Britain of 54 pence to the dollar, or $4.44½ to the sovereign or pound sterling, shall be null and void."

This section, together with the next preceding, is found in the Act of March 3, 1873, 17 Stat. p. 603. The title to that act is as follows:

"An Act to establish the custom house value of the sovereign or pound sterling of Great Britain, and to fix the par of exchange."

It is plain, of course, that this statute only fixes the value of the pound for government purposes, or, as expressed, the custom house value. As between private parties, this statute has no significance, and such value is necessarily a matter of proof. Indeed, the value of the pound sterling as found by this statute would make this bill $5,810.60, instead of $5,802.84.

This being so, in the consideration of this count of the indictment, it can not be known whether the sum of 1,194 pounds sterling is the same or more or less than the amount alleged to have been misappropriated, and hence the explanation following the words "that is to say" does not explain at all.

Again, this count is bad because it assumes that the averment that the Indianapolis Desk Company did not owe the Indianapolis Cabinet Company any sum whatever is equivalent to an averment that the draft so drawn was unwarranted and worthless. Such is clearly not the law. Nothing is more common than for one party to draw a bill of exchange on another party without any indebtedness by the latter to the former. This may be done purely as a matter of accommodation, or the draft may be drawn with the *bona fide* expectation of providing funds for its payment before the maturity of the bill. In this count it is averred that this draft was drawn on the 1st day of March, and that it would mature on the 1st day of June. Certainly in the three months intervening there was ample time to make provision for the payment of the paper. It

seems too plain for argument that, so far as any facts stated in this count are concerned, this bill may have been drawn in good faith and been worth its face.

It is also averred that Haughey failed and refused to send the bill forward for collection. No reason is given for such non-action, and it is not shown that the defendants had anything to do with such refusal. It is not averred that the bill would not have been paid if it had been sent forward, nor is it averred that the Indianapolis Cabinet Company was insolvent. So far as appears in this count, the only reason why the bill was not paid may have been the failure of the president of the bank, after having discounted the same, to use due diligence for its collection.

In this connection, as we are discussing the first count of the indictment, we call attention to the fact that this same question was presented on the trial, by an objection to the introduction of any evidence under this count.

See 5th Assignment of Error, Subdiv. e, Trans. p. 149.

But the court overruled the objection, and heard testimony as to the value of a pound sterling, thereby recognizing that such value was a fact beyond the judicial notice of the court.

The defendants also objected to the introduction of the check under this count for the sum of $5,802.84, for the reason that the indictment called for a check for 1,194 pounds sterling.

7th Assignment of Error, Trans. p. 150.

A slight examination of the first count of the indictment shows that this last objection is well taken. The allegation is that a bill of exchange for 1,194 pounds sterling was presented by and credited to the cabinet company on the books of the bank, and thereupon said cabinet company drew its check for "*said sum*" upon the said bank. To hold that the word "sum" as used with reference to the check does not refer to the same word "sum" as used

with reference to the bill of exchange immediately preceding, is to violate every rule of grammar and of rhetorical construction upon the subject.

V.

We think each of the counts of this indictment for misapplication of the moneys of the bank, except possibly the first, is insufficient for a failure to aver the conversion of the moneys so misapplied to the use of any party whatsoever.

The counts for such misapplication, from 2 to 16 inclusive, are all substantially alike in this regard, and they aver, not a conversion, but simply an intent to convert the funds to the use of the Indianapolis Cabinet Company. The language is that the said Haughey "did then and there, by virtue of his said office as president of said bank, unlawfully, feloniously and willfully misapply the moneys, funds and credits of said association without authority of the directors thereof, with intent to convert the same to the use of the Indianapolis Cabinet Company and to other persons to the grand jurors unknown, in a large sum, to wit, the sum of $8,626.50, by then and there causing said sum to be paid out of the moneys, funds and credits of said association upon a check drawn upon said association by the Indianapolis Cabinet Company, which check was then and there cashed and paid out of the moneys, funds and credits of said association aforesaid, which said sum aforesaid, and no part thereof, was said Indianapolis Cabinet Company entitled to withdraw from said bank, because said company had no funds in said association to its credit; that said Indianapolis Cabinet Company was then and there insolvent, as said Theodore P. Haughey then and there well knew, whereby said sum became lost to said association; that all of said acts done as aforesaid were done with intent to injure and defraud said associa-

tion." For whose benefit the check was drawn, or who got the money upon the check, nothing is averred.

In the case of United States *v.* Britton, 107 U. S. on p. 666, Mr. Justice Woods, speaking for this court upon an indictment for misapplication, says:

"We think the willful misapplication, made an offense by this statute, means a misapplication for the use, benefit or gain of the party charged, or some company or person other than the association. Therefore, to constitute the offense of willful misapplication, there must be a conversion to his own use, or to the use of some one else, of the moneys and funds of the association by the party charged. This essential element of the offense is not averred in the counts under consideration, but is negatived by the averment that the shares purchased by the defendant were held by him in trust for the use of the association, and there is no averment of a conversion by the defendant to his own use or the use of any other person of the funds used in the purchase of the shares. The counts, therefore, charge maladministration of the affairs of the bank rather than criminal misapplication of its funds."

So in Northway's case, *supra*, on page 332, it is said:

"It is of the essence of the crime of the misapplication that there should be a conversion of the funds to the use of the defendant or of some person other than the association."

As this indictment fails to charge a conversion to the use of Haughey, or of the Indianapolis Cabinet Company, or of anybody else, but simply avers an intent to convert, the further fact averred that the Indianapolis Cabinet Company was insolvent and thereby the money became lost to the association is wholly immaterial. This might well have happened if the check of the Indianapolis Cabinet Company had been made in the purchase of stock or of any other property for the use of the bank, as in the Britton case, and yet in such case, as in the Britton case, the conversion to the use of the cabinet company would be negatived. It is not seen how the payment of a check, made by the cabinet company, so far as appears, for some proper purpose, can any more be made a crime because of

the insolvency of the cabinet company and the consequent loss to the bank. If there was a wrongful conversion of the money of the bank by the procurement of the president, to himself or to anybody else, there was a crime, wholly irrespective of the solvency or insolvency of the party upon whose check the payment was made; but, without an averment of such conversion, consistently with the decision in the Britton and Northway cases, *supra*, there could be no crime. As is well said by Judge Benedict in Eno's case, 56 Federal Reporter, 218, the facts constituting the crime must be stated. He says:

"It is of no consequence that the payment is stated to have been unlawful. Calling a thing unlawful does not make it unlawful. Facts showing that the payment of the $100,000 to Dyett & Co. was not only unlawful, but a criminal misapplication of the bank's money, should have been stated. Nor is the indictment helped by the averment that the money was paid by the defendant to Dyett & Co. with intent to injure and defraud the association. The rule on this subject has been stated as follows: 'the words "with intent to injure and defraud" are words essential to the offense as charged, but do not enlarge the significance of the language which avers the facts necessary to be proved in order to constitute the offense.' Mass. Crim. Law 624."

VI.

In Northway's case, 120 U. S., on page 333, a prosecution against Northway, president of the bank, for aiding and abetting Fuller, the cashier of the bank, in a misapplication of its funds, Mr. Justice Matthews, speaking for the court, says:

"The acts charged against Fuller could only be committed by him by virtue of his official relation to the bank; the acts charged against the defendant, likewise, could only be committed by him in his official capacity."

If this is a correct statement of the law, then each count of the indictment in the case at bar is bad because, as we have seen, neither count shows that the defendants had any

relations with the bank, and the offense of aiding and abetting could only be committed by persons having such relations.

So far as any cases have been brought into this court, and so far as we have found cases reported in the Circuit and District Courts, all persons charged with aiding and abetting have been officers, directors or agents of the bank alleged to have been defrauded.

Evans is shown in the statement of his case to have been a director of the Spring Garden Bank. 153 U. S.

Potter, French and Dana are all shown in the indictments to have been officers or directors of the Maverick Bank. 56 and 57 F. R.

And this seems to be upon good reason. It is not to be supposed that this Section 5209 was enacted for the purpose of preventing the wrecking of banks by strangers and outsiders. The dangers to banks do not lie in those quarters. So long as the officers, directors and agents of the bank are honest and faithful, there is no danger that the bank will be plundered by outsiders, in any of the ways referred to in Section 5209. The attempt to stretch the language of the section so as to reach the customers, the borrowers from the bank, who have nothing whatever to do with its management, seems to be wholly unwarranted, and this view is directly within the statement of this court in the Northway case, above quoted. In analogy to other cases, such must be the rule.

Thus, to hold that the stranger, outside the bank counter, who borrows from officers of the bank moneys in excess of the amount they are authorized to loan him, aids and abets such officers in the misapplication of the funds of the bank, or in any other wrongful act, seems almost an absurdity. As well say that one who buys intoxicating liquors of one who sells in violation of the law aids and abets the seller in his crime, and yet expressly the reverse has been held to be the law.

Thus, in the State *v.* Teahan, 50 Conn. 92, it is said:

"It is insisted, however, that the statute which provides that 'every person who shall assist, aid, counsel, cause, hire or command another to commit any offense, may be prosecuted and punished as if he were a principal offender,' governs this case, it being contended that the person who purchases the liquor induces the seller to commit the crime of selling it and so aids and abets him in the commission of the offense. But we are satisfied that the purchaser is not an aider and abettor of the offense within the meaning of the statute. The abetting intended by it is a positive act in aid of the commission of the offense—a force, physical or moral, joined with that of the proprietor in producing it. This is clear from the context, where aiding is classed with assisting, causing, hiring and commanding. The abettor, within the meaning of the statute, must stand in the same relation to the crime as the principal—approach it from the same direction, touch it at the same point. This is not the case with the purchaser of liquor. His approach to the crime is from the other side. He touches it at wholly another point. It is somewhat like the case of a man who provokes or challenges a man to fight with him. If the other knocks him down, he has induced, but in no proper sense abetted, this act of violence. He has not contributed any force to its production. He touches the offense wholly on the other side. The purchaser of liquor, by his offer to buy, induces the seller of the liquor to make the sale; but he can not be said to assist him in it. The whole force, moral or physical, that went to the production of the crime as such, was the seller's.

The same doctrine was held by the Supreme Court of New York, in The People *v.* Smith, 28 Hun. 627, upon the same state of facts.

By Section 5209, every president or cashier who, without authority from the directors, issues or puts forth any certificate of deposit, draws any order or bill of exchange, makes any acceptance or assigns any note, draft or bill of exchange, is indictable and subject to the penalties prescribed by that section.

The theory of this prosecution would require this court to hold that, if the president or the cashier of the bank should make or issue any such paper whatever, any per-

son receiving the same, knowing its character or knowing that it was accommodation paper, would be subject to indictment and punishment under that section as an aider and abettor.

So, as another illustration, take the case of an abortion. In Massachusetts they have a statute providing that "whoever aids in the commission of a felony or is accessory thereto before the fact, by counseling, hiring or otherwise procuring such felony to be committed, shall be punished in the manner prescribed for the punishment of the principal felon."

Commonwealth *v.* Adams, 127 Mass. 15, was an indictment under this statute against Mary J. Adams for aiding, counseling and procuring such crime to be committed. Mary J. Adams was not the person upon whom the abortion was had. Will anybody contend that the person upon whom such abortion was had was subject to indictment under that statute? It seems very clear that this could not be so. In the language of the Connecticut case, she and the doctor, or the other persons implicated, approached the act in different directions and touched it at different points.

As shown in United States *v.* Gooding, *supra*, aiding and abetting as used in the United States Statutes "import assistance, co-operation and encouragement." In that very case could an indictment have been sustained against the man who used the ship as an aider and abettor of him who fitted it out, even if the proof showed it was fitted out with the expectation of such use by the second party?

As well say that he who buys stolen property aids and abets the stealing. He may commit a crime, but it is not that crime. Aiding and abetting differ only in degree, the latter term importing encouragement, counsel, etc.—moral support.

But both must precede or be contemporaneous with the

act. The assistance, co-operation and encouragement must be with the same intent to accomplish the same end. And we insist that an act of a banker intended, however mistakenly, solely to save his bank, is not in the sense of the law aided or abetted by the act of a customer directed and intended solely to the interests of such customer. In short, under the language of this court in Gooding's case, a charge of aiding and abetting can be sustained only when a charge of combination or conspiracy could be sustained.

But, without further argument or illustration, the decision of this court in Britton's case, 108 U. S. 193, is very clearly in point. Indeed, it goes much further than our contention here, because Britton was an officer, namely, the president and one of the directors, of the bank. He, being insolvent, had procured his own note to be discounted by the bank, with an insolvent endorser, as he well knew. Yet it was held that this was not a misapplication of the funds of the bank by him, and this must have been upon the ground that in the matter he was not acting on behalf of the bank; that he "approached the transaction from another direction and touched it at another point." The court said:

> "Whether the discounting of the note was an advantage to the association or not, and whether the note was paid or not, is immaterial. If an officer of a banking association, being insolvent, submits his own note, with an insolvent endorser as security, to the board of directors for discount, and they, knowing the facts, order it to be discounted, it would approach the verge of absurdity to say that the use by the officer of the proceeds of the discount for his own purposes would be a willful misapplication of the funds of the bank and subject him to a criminal prosecution. The count under consideration charges nothing more than this against the defendant. We are of opinion, therefore, that it does not charge an offense under Section 5209 of the Revised Statutes."

It seems to us this decision goes far beyond the requirement for an acquittal of the plaintiffs in error in the case

at bar. Here, as we have seen, in the indictment absolutely nothing is said as to what was done by the defendants. As matter of fact, as shown by the bill of exceptions in the record, they were officers of the Indianapolis Cabinet Company, to which company, the government claimed, moneys of the bank, largely in excess of what was warranted, either by the law or by any just rules of credit, had been loaned.

Indeed, the claim of the government upon the trial was, and they introduced evidence designed to prove, that the defendants as such officers, in the procurement of such loans, had made, and Haughey as president of the bank had received as evidence of the indebtedness in such loans, paper of divers corporations which it was claimed he and they knew was of largely less value than its face.

There was no evidence tending to prove that Haughey, as president of the bank, in receiving such paper was the victim of any fraud; that he had not full knowledge of the character of the paper at all times.

The proof was clear and undisputed that the sole management of the affairs of the bank was in Mr. Haughey; that the board of directors had entrusted him with the sole power to make loans and discounts; and that in the exercise of this power all credits given to the cabinet company were allowed by him.

In order to a proper apprehension of the questions in this case, it must always be kept in mind that, as shown by the Bill of Exceptions, Mr. Haughey was practically board of directors, president and cashier; that the board of directors permitted him to manage the entire business of the bank, and thus his action in making a loan or discount was the action of the bank.

Merchant's Bank *v.* State Bank, 10 Wall. 604.

Preston Nat. Bank *v.* Smith Purifier Co., 47 N. W. 502.

Viewed in this light, it seems to us that all the trans-

actions between Mr. Haughey and the Indianapolis Cabinet Company, or the defendants as its representatives must be treated as loans and, within the decision in Britton's case in 108 U. S., can not be treated as crimes under this statute.

Yet upon this state of facts, and upon the indictment in the form in which it is, containing not a single word to indicate the nature of the acts claimed to incriminate the defendants, the trial court held that these transactions were not loans, but were purely fictitious and fraudulent, and that, therefore, Britton's case, *supra*, had no application. Yet in Britton's case it seems to be held that, if it is claimed that the defendants have acted fraudulently in procuring a discount, such charge of fraud must be found in the indictment. Here it is not even alleged that the defendants had anything to do with procuring the discount. In the Britton case it is said:

"It is within the discretion of the directors, or the officers or agents lawfully appointed by them, to discount such a note if they see fit, and it might under certain circumstances tend to the advantage of the association. This count does not charge that the note of the defendant was discounted at his instance, without the authority of the board of directors. On the contrary, the charge is that he caused and procured it to be discounted. This implies that it was done by the directors or their duly authorized officers or agents. *It is not alleged that the discount was procured by any fraudulent means.* From all that appears, the board of directors or the officer or agent by whom the note was discounted may, upon the knowledge of all the facts and the utmost good faith and for the advantage of the association, have decided to discount the note."

We insist, therefore, that upon the indictment the defendants can not be held because there is nothing connecting them with the transaction or showing that they occupied such a relation thereto as to warrant holding them as aiders and abettors; that, if they are to be held for acts of fraud in procuring the discount, those acts must be alleged in the indictment. But we further insist that,

upon the facts as shown in evidence, it appears that they, or the company they represented, were mere borrowers from the bank, dealing at arm's length with its officer, who was by the board of directors fully empowered to act in the premises, and that, therefore, they are not liable. To hold that under such circumstances the defendants are liable is to establish the rule that, in every case of a national bank failure, any person who has obtained loans of the bank in an amount which, upon a retrospect after the failure, seems excessive, may be put upon trial as an aider and abettor of the officers of the bank in a misapplication of its funds; and if, in a community smarting under losses resulting from the failure of the bank, a jury can be found which, under the spur of a zealous court, will find such loans to be largely excessive, then such debtor is to be branded as a felon.

VII.

Upon the trial, as shown by the bill of exceptions (Trans. p. 96), Edward Hawkins, receiver of the Indianapolis National Bank, being upon the witness stand, and having testified that the face assets of the bank, when he took possession, amounted to $2,098,268.65, the following questions were asked, answers and rulings made and exceptions taken by the defendants:

Question. What was the general character of the assets, that is, as to being good, worthless or doubtful?

To which question defendants severally objected as follows:

Mr. Miller—If your Honor please, we do not think he can characterize the whole assests of the bank in that way.

The Court—He can make a division, but he need not characterize the whole.

Mr. Kern—I am asking him to state how those assets, in regard to the division he was required to make up, were designated? I think I may do that.

The Court—He may answer.

To which ruling of the court, the defendants, by their counsel, then and there duly and severally excepted.

Answer. The assets were scheduled and forwarded to the department as good assets, $878,946.04.

Counsel for defendants then and there further objected to the question as follows:

Mr. Miller—If your Honor please, if there was a schedule of these assets made and forwarded to the department, the best evidence of them is the department records themselves. I do not think he can prove orally before a jury the contents of a paper made in that way, and I object to it on that ground.

The court overruled the ojection, to which ruling of the court the defendants, by their counsel, at the time duly and severally excepted.

If it was material that the value of the assets of the bank should be proven upon this trial, it was necessary that such proof should be made by legal evidence. That this statement of the receiver as to the valuation at which these assets were scheduled and forwarded to the department was not competent evidence, is a proposition too plain for argument. It is not even a statement that the valuation so placed upon them was made by the witness at all. The answer is simply: "The assets were scheduled and forwarded to the department as good assets, $878,-946.04." The purpose of the evidence was to impress upon the jury the idea that the failure of the bank was a very bad one, and it did carry the suggestion that the defendants' culpability was proportioned to the insolvency of the bank. Consistently with our respect for this court, we can neither argue nor cite authorities to show that this evidence was incompetent. So to do would be an imputation upon the intelligence of the court. In the same connection, and very shortly afterwards, the same witness

being upon the stand, the following questions were asked, answers and rulings made, and exceptions taken: (Tr. p. 98.)

How much of the paper of this cabinet company, the Indianapolis Cabinet Company and its auxiliary companies and individuals, was totally unsecured and was marked by you as worthless?

To which question counsel for defendants then and there objected.

The Court—He need not state how it was marked.

Mr. Kern—Strike off the last words, "and marked by you as worthless."

The Witness—$150,376.29.

Question. Mr. Hawkins, after your investigation, what, in your judgment, is the value of the claim of the Indianapolis National Bank against the Wooten Office Desk Company of Richmond of $48,565.33?

To which question the defendants severally objected as follows:

Mr. Winter—The witness has not stated anything about his investigation at Richmond; he stated that he made inquiries around here, and that there is no plant here.

The Court—The value of the testimony, of course, would depend upon the thoroughness of the investigation.

Mr. Kern—I understood you to say that you had been over to Richmond?

Witness—No, sir. The attorney for the bank corresponded with the attorneys for the bank over there, and I got my information in that way.

Mr. Miller—Our objection is on the ground that the witness was not shown to have any knowledge whatever of the assets of the Wooten Office Desk Company, or to have made any personal investigation or inquiry about it. The information is simply derived from hearsay; all that he has is derived from correspondence with an

attorney; he has not shown that the attorney himself has made any inquiry in the matter.

The court overruled the objection, to which ruling of the court the defendants by their counsel at the time duly and severally excepted.

Answer. If my figures are correct, and I think they are, $21,759.43 that is unsecured, and I consider it worthless.

Let it be borne in mind that this paper of the Wooten Office Desk Company was a part of the paper placed in the bank by these defendants as officers of the Indianapolis Cabinet Company, and that the value of that paper was one of the vital issues in the case. The witness states that the only information he has upon the subject he obtained at second hand through the attorney at Richmond. Here, again, the witness is permitted to testify and does testify, wholly from hearsay, and that hearsay three degrees removed from the true source of information. If this is competent evidence, Greenleaf and Starkey and all the other text books on the subject ought to be rewritten, and the decisions of this court ought to be revised.

The same witness being upon the stand, upon cross-examination (see Trans. pp. 98, 99) was asked whether he had included in the $375,860.50 all paper upon which the names of the Indiana Cabinet Company, The United States Office Furniture Company, The Indianapolis Desk Company, The Indianapolis Veneer and Panel Company, The Indianapolis Office Furniture Company, The Indianapolis Plow Company and The Indianapolis Cabinet Company, were borne in any capacity, and answered the same in the affirmative. He also stated that such paper included all in which The Indianapolis Cabinet Company appeared as maker, drawer, acceptor or endorser. The witness also stated that he had included in said sum paper of the Emerson-Moore Desk Company to the amount of between $800 and $900, and thereupon the following ques-

tions were asked, answers and rulings made and exceptions taken (Transcript 99 and 100).

Question. To what amount?

Answer. It was between eight and nine hundred dollars.

Question. Can you state the amount any more accurately than that?

Answer. A piece of $268; a piece of $291.10; and $345.30. They are notes of the Indianapolis Cabinet Company endorsed by the Emerson-Moore Desk Company.

Question. Have you those notes here?

A. I presume they are in this bunch. I haven't gone over this bunch at all. These papers have all been in the hands of the attorneys here and Mr. Hayes, and I haven't been through them at all.

Mr. Kern—Mr. Hayes says they are at the bank.

Mr. Winter—I want the record to show, if the court please, that upon the adjournment of the court on the evening of the 2d day of May, having requested the witness to produce for the purpose of cross-examination all the paper of the Indianapolis Cabinet Company, or upon which the Indianapolis Cabinet Company or other concerns with which it was connected were liable, which were referred to in his direct examination, and the amount of which was stated in his direct examination as $376,870.50, and now desiring to cross-examine the witness in reference to the item testified to by him in direct examination as being included in this total amount of paper on the Emerson-Moore Desk Company to the amount as stated in such direct examination of about eight hundred dollars; and that the defense now propose to examine the witness in reference to the character of this paper with a view to showing in what capacity the Indianapolis Cabinet Company is liable upon it, the witness having stated that the Indianapolis Cabinet Company was liable upon it as maker; and that the witness is requested to produce the paper which is in his possession as receiver of the Indian-

apolis National Bank for the purpose of being cross-examined in reference to that paper in order to elicit its true character and the true relation of the Indianapolis Cabinet Company to it.

The Court—And the court refuses to permit it on the ground that the paper is not before it and on the ground that no steps were taken by the defense as required by law to have it produced in court; on the ground that the witness has not referred to it except from a memorandum from which he testified, and on the further ground that if the paper referred to should be produced in evidence by the government, the court has advised counsel that an opportunity will be given them to examine witness upon it.

Mr. Winter—Let the record show that just previous to the adjournment of court, upon the evening of the 2d day of May, when the witness was being examined in chief he was requested by the counsel for the defendants, in the presence of the court, to produce the paper referred to in his direct testimony, including that of the Emerson-Moore Desk Company, for use in his cross-examination, and that he agreed to do so in the presence of the court.

The Court—The court, however, was no party to the agreement.

Mr. Winter—That the court refused to permit us to examine the witness in the line indicated at the present time and that the defendants each severally except.

* * * * * * * * * * *

Question. Have you the paper here to which you have testified upon which the Wooten Office Desk Company appears to be liable?

Answer. Notes and drafts?

Q. Yes.

A. Yes, sir.

Q. Will you produce them?

To which question counsel for the government then and there objected as follows:

Mr. Burke—The government makes the objection because that paper is part of the testimony of the government in chief in this case, and with the statement of the court that at the proper time the notes and papers called for, will be submitted to the jury and to the inspection of the defendants' counsel.

The Court—And the court sustains the objection and states that at the proper time, when the papers have been produced in the orderly progress of the trial, counsel will be permitted to recall the witness and examine about it if it becomes necessary to do so; and that the court will not permit the government's case to be interjected by the defense on the cross-examination of this witness. And the defendants may severally have an exception.

Mr. Winter—We desire the record to show, if the court please, that the witness having been requested, immediately before the adjournment of the court, on the 2d day of May, to produce in court all the paper referred to in his grand total that he may be cross-examined in reference to its character, and he having stated that he would produce it; that the paper is now, as stated by the witness, in court, ready to be produced, counsel for the defense desire at this stage as a part of the cross-examination of the witness to inquire of him with reference to this paper, and to exhibit the paper to him upon cross-examination with a view to testing the correctness of the statements that he has made, as to the character of the paper involved in the grand total testified to by him, and that to the ruling of the court in not permitting the witness to produce the paper, each defendant severally excepts.

Several days afterwards, after a large amount of other testimony had been taken, and after the government had introduced in evidence, the paper constituting said indebtedness of said Indianapolis Cabinet Company and

said other companies, said witness Hawkins was directed by the court to take the witness stand for said cross-examination on behalf of the defendants, which cross-examination was by defendants' counsel declined.

The upshot of the matter was that the evidence for the government showing the amount of the alleged indebtedness of the cabinet company to the bank, with the characterization of the same by the receiver of the bank, upon hear-say information, as mainly worthless, was permitted to go to the jury to poison their minds; and the defendants were denied the right to cross-examine the witness as to such paper, to have the same produced and examined in detail for many days until the poisonous effect of the evidence had permeated the whole case; and then the court offered to call the witness, near the close of the government's case, that he might be cross-examined as to these matters. The reasons given by the court why the cross-examination would not be allowed, we submit, are no better than the ruling itself.

1st. The court says that he refuses to permit it on the ground that the paper is not before the court. The witness had just said that he supposed the paper was in the bunch that he there had.

2d. The court said he refused because the defense had taken no steps, as required by law, to have the paper produced in court.

Thereupon it was shown that counsel for defense at the adjournment of the court the day before had asked the witness to produce the paper which was in his custody and he agreed to do it, and he then accordingly had it in court.

3d. The court refused on the ground that the witness had not referred to the paper except from a memorandum from which he testified, and that if the paper referred to should be produced in evidence by the government, permission would be given to cross-examine about it.

It is a new proposition of law that a witness may out of court make a memorandum with reference to papers in his possession, come into court and testify to their contents and character, and can not be cross-examined with reference thereto unless the party calling him shall afterwards formally bring the papers and put them in evidence. Yet such was the ruling in this case.

But the ruling was worse than this, for the witness actually, as he testifies two or three times (Rec., p. 99 and 100), had the papers with him at the very time.

Now, here are three rulings upon the admission of evidence in the testimony of this single witness, each one of which, as it seems to us, is too clearly wrong to admit of plausible argument to the contrary. Each one of these rulings was in a matter of importance, and the result of each one was very hurtful to the defendants.

Again, L. V. Horton, a witness of the government in its original case, being upon the witness stand, and said witness being under cross-examination, the following proceedings were had, including questions, answers, objections, remarks by court and counsel and exceptions (Transcript, pp. 103, 104.)

Question—I will ask you to what extent the business of the receiver there has consisted in the disposal of the Wooten desks?

Objected to by counsel for the government as not cross-examination.

Mr. Winter—It goes to show the value of the Wooten property.

The Court—It does not appear from the testimony of this witness that the Wooten company had a cent's interest in this. It may be that the jury will view it differently from what I do; I simply say that in my judgment the whole evidence shows that in all of this stuff the Wooten company hadn't one single cent., not a cent. It is not cross-examination and I will sustain the objection.

Mr. Winter—It seems to me, if your Honor please, that it is legitimate cross-examination upon the value of the property that was sold over there; their effort was to show that there was nothing there; we propose to show that it was of value, and if this evidence tends in any degree to show the value of the property and the business the company was doing—

The Court (interrupting)—You may show anything over there. You ask him what orders he had there. The objection made was that the witness was testifying to work that was done here by the Indianapolis Cabinet Company, and never passed out of the ownership and control of the Indianapolis Cabinet Company, and with which the Wooten company had no more to do than I had.

Mr. Winter—The proposition I have here is this. This witness has testified that the cabinet company was not able to furnish goods to fill the orders he had for these goods. Now I propose to show that, even after it went into the hands of a receiver, these orders had to be filled by the receiver, and that a good part of the work of the receiver was in filling orders that had been obtained prior to his appointment.

The Court—I am simply stating the impression made upon my mind; the jury will not take the court's impression of it, however, if the jury think the court is mistaken about the facts.

Mr. Miller—We want the benefit of an exception to the way in which it is expressed now.

The Court—You can have the benefit of it.

Mr. Miller—We except to the expression of the opinion given to the jury now as to the effect of the evidence.

The Court—I will endeavor at the proper time to see that the instructions to the jury conform to the forms of law. I state to the jury that if they do not view it as I view it, it is their duty to view it as they think is right.

Here we have not only four erroneous rulings as to the

admissibility of evidence, but each and all of them show in a feeble way the spirit in which this trial was conducted. It is, of course, impossible upon paper to reproduce the scenes of the court room and the influences in manner brought to bear upon the jury; and the allowable limits of a bill of exceptions forbid the rehearsal of the great number of similar adverse and erroneous rulings. These are simply specimens. *Ex uno disce omnes.*

But in addition to the ruling in the last case, the defendants have good ground to complain of the expressions of opinion by the court as to the effect of the evidence. We are aware that it is allowable in the federal courts for the Judge in his instructions to comment upon the testimony, and perhaps to advise the jury as to the consideration that should be given the same, but we insist that the court has no right during the progress of the trial, as the evidence comes in, to comment upon it, item by item. To do so is to prevent the jury from giving it a fair consideration as a whole, and render it impossible that the party aggrieved shall get a fair exception to the action of the court in the premises. Nor is this all. It is the custom and the duty of the presiding Judge in all well-regulated courts, at each adjournment, to admonish the jury that they shall hold their conclusions in abeyance, and not make up their minds, as to the effect of the evidence or the conclusions upon the same, until the case shall be finally submitted. Yet the effect of such remarks as were made by the Judge in this case is to completely nullify any such admonition, and, so far as in him lay, to induce the jury to form a verdict of guilty off-hand, before the defendants had ever been heard at all. For a court to make such statements as were made in this case and then attempt to qualify them by suggesting that, if the jury do not look at it as he does, they shall look at it in their own way, does not at all tend to cure the error.

VIII.

At the conclusion of the government's testimony in chief, the defendants moved the court that the government be required to elect and specify the particular transaction in each of the general counts in the indictment, to wit, the 17th to the 36th, inclusive, which it would rely upon as a substantive charge upon which to claim a conviction, to the end that the defendants might know to what particular charge in each count their evidence was required to be addressed.

See bill of exceptions filed May 16, 1894, Trans. p. 79.

This motion was by the court overruled, to which ruling the defendants did then and there except and filed their bill of exceptions.

Section 1024 R. S., reads as follows:

"When there are several charges against any person for the same act or transaction, or for two or more acts or transactions connected together, or for two or more acts or transactions of the same class of crimes or offenses, which may be properly joined, instead of having several indictments, the whole may be joined in one indictment in several counts; and if two or more indictments are found in such cases, the court may order them to be consolidated."

It is well settled that duplicity in criminal pleading is bad. Two or more distinct offenses should in no instance be joined in one count of an indictment.

4 Am. & Eng. Encycl. of Law 755

United States *v.* Wentworth, 11 Federal Reporter 52.

In United States *v.* Sharp, 1 Peters C. C. Rep. 181, the best of reasons is given for this rule. It is there said:

"If two or more offenses are thus blended together in one count, they (the jury), must find the whole or ignoramus the whole; whereas, if they are arranged in different counts, they may find the one a true bill and ignoramus as to the other. How is a petit jury in a case of this kind to find their verdict? If they say the prisoners are guilty of a part of the offense described in one count, and not guilty as to the others, they do not find them guilty 'in

manner and form,' but where there are different counts, they are the same as different indictments."

United States *v.* O'Callahan, 6 McLean 597.
United States *v.* Dickinson, 2 McLean 325.
United States *v.* Peterson, 1 Wood & Min. 305.
State *v.* Shields, 8 Blackf. 151.
Knopf *v.* State, 84 Ind. 316.

In this last cited case the following quotation is made from the State *v.* Smith, 61 Maine 386.

"No rule of criminal pleading is better established than that which prohibits the joinder of two or more substantive offenses in the same count. A substantive offense is one which is complete of itself, and is not dependent upon another. When several acts relate to the same transaction, and together constitute but one offense, they may be charged in the same count, but not otherwise. Each count in an indictment must stand or fall by itself. The jury can not find a verdict of guilty as to one part and not guilty as to another part of the same count. This strictness of pleading is necessary in order that the accused may not be in doubt as to the specific charge against which he is called to defend, and that the court may know what sentence to pronounce. When two or more independent offenses are joined in the same count, it will be bad for duplicity. State *v.* Burgess, 40 Me. 592–4; State *v.* Palmer, 35 Me. 9; See also Reed *v.* People, 1 Parker C. C. 481; People *v.* Wright, 9 Wend. 193; Miller *v.* State, 5 How. (Miss.) 250; Commonwealth *v.* Symonds, 2 Mass. 163."

The State *v.* Weil, 89 Indiana 286.

In the People *v.* Adams, 17 Wend. 475, it is held that under an indictment of the same character as these general counts the government can be permitted to prove but a single offense. Relying upon this principle, we objected to the introduction of evidence from time to time upon more than one of the items of alleged misappropriation in each of these counts. These objections having been overruled, it seems to us clear that, before commencing their testimony, the defendants were entitled to know what specific charge in each count the government stood upon for a conviction.

The truth is, the court below seems to have recognized that an error was committed in overruling this motion, and hence refused to enter judgment upon these counts, sustaining the motion in arrest as to them. We think this was a confession of error by the court, because no reason can be given, or was given, why these counts were vulnerable to the motion in arrest, more than any of the other counts of the indictment. Each of these counts was in form and substance, except as to the amount, of precisely the same legal effect as the counts upon which judgment was rendered. But the motion was sustained, and was followed by a refusal to enter judgment, for the manifest purpose of depriving the defendants of the benefit of this exception. But this tardy action of the court by no means cured the error in refusing to compel the government to elect. The effect of that refusal was that the government was permitted to and did offer proof of all the transactions referred to in these general counts, and the defendants, in violation of their plain rights, were required to make their defense against the wholesale charges therein contained. The transactions which the defendants were thus called upon to defend involved every check which entered into the $375,000, being thousands in number. A hint of the magnitude of the burden thus placed upon them may be found in the 35th and 36th counts, in which the transactions are in some measure classified. That, for their own protection in making their defense, the defendants were entitled to have this motion sustained is very clear upon the authorities.

In Stockwell *v.* the State, 27 Ohio State 563, Stockwell was indicted for selling liquor contrary to law. The court says:

"As the precise time laid in the indictment is immaterial, the plaintiff in error might well have been convicted, on proof that he committed the offense charged, at any of the times in regard to which evidence was offered by the State. But the indictment con-

tained but one count; the plaintiff in error stood charged by the grand jury with one single misdemeanor, with one specific criminal act. To this charge he had pleaded not guilty. A single issue was thus formed, which it was the province of the jury to determine, according to the evidence, under the instructions of the court. No evidence should have been admitted which was not relevant to that issue, and as that issue was limited to a single transaction, the evidence should have been restricted accordingly. The rule on this subject is thus clearly stated in 1 Bishop on Crim. Pro., Sec. 460: 'Where there is a single count, in an indictment for a misdemeanor, as well as in an indictment for a felony, whatever the number of counts, the court will restrict the prosecutor, by so compelling him to elect as shall prevent his giving evidence of more than the one transaction.' And in this doctrine, so far as we are aware, the adjudged cases agree. The People *v.* Jenness, 5 Mich. 305; Lovell *v.* The State, 12 Ind. 18; The People *v.* Hopson, 1 Denio 574; Elam *v.* The State, 26 Ala. 48; Kinchlow *v.* The State, 5 Humph. 9; The State *v.* Bates, 10 Conn. 372.

"In this case, the prosecutor offered evidence of a number of distinct offenses, of the same character, extending over a period of four months, and for either of which, if fully proved, a conviction might have been sustained under the indictment. So far as appears, this was done without objection. Whether, after offering evidence of a particular offense which would sustain the charge made in the indictment, the State should be permitted, against objection, to offer evidence in proof of another substantive offense, is a question addressed, perhaps, to the sound discretion of the court under the circumstances of the case. State *v.* Smith, 10 Conn. 74.

"But, be this as it may, it was the clear right of the defendant to know, before entering on his defense, for what particular transaction he was being tried.

"Having been arraigned on a single charge, he should not have been required to defend against many charges. We are clear in the opinion that the court erred in not requiring an election to be made by the prosecutor, when asked for by the party on trial. Of course, we do not mean to controvert the doctrine that in classes of cases in which guilty knowledge, a particular intent, or a scienter, are essential ingredients in the offense charged, it is competent to prove these, if possible, by evidence of other criminal acts committed by the defendant about the same time. But such evidence is only competent when it tends to prove some fact necessary to constitute the offense on trial.

"The court also erred in directing the jury to consider all the

evidence tending to prove any of the sales in regard to which evidence had been offered. Under this charge, it was quite possible that part of the jury might base their verdict upon one act, and part upon another, and a verdict might be thus rendered, without an actual agreement of the jury. And it is very clear that, after verdict, the plaintiff in error could not legally know of what particular specific offense he had been found guilty."

So in People *v.* Jenness, 5 Mich. 305; 326. This was a prosecution for incest. The court says:

"It was not a case in which the court could compel the prosecutor to elect, because the charge, on the face of the information, was confined to a single act.

"It was not claimed by the prosecution, and could not legally be claimed, that it was competent to convict the defendant of more than one act under this information. But the prosecutor having the right to select among all the acts of the kind which he could prove to have been committed between the parties, within the period alluded to, and within the jurisdiction, any one of those acts, before evidence had been introduced, was as properly the *act charged* in the information as any other. In other words, until evidence of some such act had been given, the charge in the information was floating and contingent, aimed as much at one as another, and at no one act in particular; and it remained for the evidence to point the charge to the particular act intended. But when evidence had been introduced tending directly to the proof of one act, and for the purpose of procuring a conviction upon it, from that moment that particular act became the *'act charged.'* What had, till then, been floating and contingent, had now become certain and fixed. The prosecutor had made his election, and could not elect again; nor could he be allowed to prove any other act of the kind as a *substantive offense* upon which a conviction might be had in the cause. The information could be used as a drag-net *only* till the first act had been entangled in its meshes; every other act must be allowed to escape this throw of the net; and thenceforward the evidence must be aimed at *this* act. If others of the same kind lie in the same range they can only be noticed for a secondary purpose, as they may be connected with or bear upon *this*."

Authorities to the same effect might be largely multiplied, but they are clearly unnecessary.

This indictment consists of fifty counts, of which four were nollied before the jury retired. As we have seen, it

gave the defendants no information as to the particular acts charged against them. Each of these twenty counts, from 17 to 36 inclusive, involves at least $130,000 of transactions against which the statute of limitations had run, the paper representing these transactions still in the hands of the bank, being renewals. It was also in evidence, as shown by the bill of exceptions (Transcript, p. 95) that at the time the bank failed it held first mortgage bonds of the Indianapolis Cabinet Company for $250,000, pledged generally for all the debts of the said cabinet company, and that, as to many of the pieces of paper held by the bank, there was a specific agreement bringing them within that pledge. To hold that the action of the trial court in permitting the government to put in its proof under each of these wholesale counts, and thus to require the defendants to make their defense against the same, and to say that a refusal of the court after verdict to render judgment upon these counts rights the wrong, is to make the rule requiring a prosecution upon specific charges a mere mockery.

INSTRUCTIONS.

But the case as it went to the jury was worse even than that, for it was aggravated by the instructions given by the court to the jury. That there is no distinction in law between these general counts and the specific counts warranting the sustaining of the motion in arrest as to the former, but not as to the latter, is evidenced by the fact that the court in his statement of the issues to the jury classifies the first 36 counts all together, and states in substance that the only difference between them is that the first 16 are specific and the others general. (See Trans. p. 126.)

He then tells the jury that if it is proved beyond a reasonable doubt that Haughey did misapply the moneys, funds or credits of the bank, as charged and described in the several counts of the indictment relating to that sub-

ject, by cashing, discounting and paying for the use and benefit of the Indianapolis Cabinet Company out of the moneys, funds and credits of said bank *a large number* of worthless notes, drafts and bills of exchange, known by him to be worthless, etc., then he was guilty of the offense charged; and if the defendants are shown to have aided and abetted him in such acts, then they are guilty. That is to say, if Haughey is shown to have misapplied *any* moneys, funds, etc., whether they are the same misapplications referred to in any of the counts, he is guilty. Further along he tells the jury that "the particular acts of misapplication described in the several specific counts must be established by the proofs as therein respectively charged. *If, however, there are any willful misapplications shown by the evidence which are not covered by the special and specific counts, they may be included under the general counts and a verdict rendered thereon accordingly.*" (Trans. p. 129.)

And again. "Did Theodore P. Haughey, as president of the Indianapolis National Bank, unlawfully and knowingly, and with intent to injure and defraud said bank, as charged and described in the several counts of the indictment relating to that subject, willfully misapply the moneys, funds and credits of said bank by cashing, discounting and paying, for the use and benefit of said Indianapolis Cabinet Company, out of the moneys, funds and credits of said bank without authority from its board of directors, *any* notes, drafts or bills of exchange drawn by and upon insolvent persons, firms and companies, knowing such notes, drafts or bills of exchange to be worthless. If he did, he has committed the offense of willful misapplication as charged and described in the several counts of the indictment relating to that subject which have been established by the proofs." (See Trans. p. 129.)

In our second instruction (Trans. p. 108), we asked the

court to tell the jury, that, in order to warrant a verdict of conviction, the proof must show, not merely that the defendants had committed some wrongful act, but that they committed the specific wrongful acts set out in the indictment. We submit that these instructions, as given by the court, could not fail to produce upon the minds of the jury the belief that if they found any acts of misapplication, it was their duty to convict the defendants.

The refusal of this 2d and each of our other instructions was duly excepted to before the jury retired. (Tran. p. 108).

We also submit that, in connection with these same matters, the court erred in refusing to give to the jury the 37th instruction asked by the defendants. (Tran. p. 121).

By this instruction the court was requested to tell the jury that there could be no conviction for any transaction occurring three years prior to the finding of the indictment and, if the evidence left any transaction in such a condition as that it could not be determined whether it antedated such three years, then, as to such transaction, there could be no conviction.

It will be borne in mind that, as shown by the bill of exceptions (Tran. p. 107), this indebtedness of the Indianapolis Cabinet Company to the Indianapolis National Bank was of many years' growth, the recital being as follows:

"Be it further remembered, that there was evidence tending to show that in many instances the evidence of indebtedness held by the Indianapolis National Bank at the time of its failure against the Indianapolis Cabinet Company and other persons and companies connected therewith, mentioned in the indictment, were simply renewals of other evidences of indebtedness which had previously been held by the bank, some of them antedating the 1st of December, 1890."

The indictment was found in December, 1893. On page 105 it is shown that on the first day of January, 1891, the indebtedness of said cabinet company to the bank

aggregated $129,000, and that the indebtedness continued to increase, etc.

It was to cover this phase of the case, to let the jury understand that they could not convict the defendants for any acts performed in obtaining moneys from the bank, or for aiding and abetting Mr. Haughey in the disposition of any moneys of the bank prior to December, 1890, that this instruction was asked.

Instead of the instruction being given, as we have already seen, the court instructed the jury that, if the charges in the specific counts were proven, as to them there should be a verdict of guilty, and that, if there were any misapplications proven, not within the specific counts, that is, within the counts from 17 to 36 inclusive, which would embrace the transactions prior to December, 1890, there might be a verdict of guilty as to such charges so embraced in the general counts, thus leaving them at liberty to find a verdict of guilty upon charges of misapplications of funds originally obtained, or originally misapplied, prior to December, 1890, provided the paper upon which such alleged misapplications were made continued in existence after that date.

In short, we insist that the defendants had a right to have the jury told that, if the government relied on any of these acts, involving intermingled transactions before the period of limitations, it must separate such transactions by its evidence so that the jury might make the same separation in finding its verdict. Otherwise, we were entitled to acquittal on those counts.

In our third and fourth instructions we asked the court to tell the jury that this was a highly penal statute, and that, to warrant a conviction, the offenses charged thereunder must be proven strictly according to the terms of the statute; and in the fourth instruction we asked that they be told that each count of the indictment must stand or fall by itself as if it were a separate and independent

indictment. Both of these instructions were refused and nothing equivalent to them was given to the jury. If it be said that the refusal of neither of them was in itself vital, we answer that, in view of the fact that the case was put to the jury upon these general, as well as the specific, counts, a fair trial, to which the humblest citizen is entitled, demanded that these instructions or something equivalent to them should be given to the jury.

IX.

As shown by the bill of exceptions (Transcript, pp. 92, 93, also 106), the relation of the Indianapolis Cabinet Company to the Indianapolis National Bank was simply the relation of customer and banker. Neither Mr. Haughey nor any other officer or director of the bank had any interest in the Indianapolis Cabinet Company, or in any of its associate corporations, either directly or indirectly, nor had any of the officers or directors of the cabinet company, or of said associate corporations, any interest whatever in said bank, nor were there any business relations between Haughey or any of said corporations, or any of its officers, except such as grew out of the relation of customer and banker. In other words, it is undisputed that Theodore P. Haughey had no interest whatever in any of the business of the cabinet company or its associate corporations. It further appears that for many years, fifteen or more, the entire banking business of said cabinet company had been done with said Indianapolis National Bank; that, about fifteen years before, the cabinet company started in business as a small concern, and had grown and spread out until it had become one of the largest, if not the largest, desk manufacturing establishments in the world. As the result of this growth, it further appears in evidence that from small beginnings the indebtedness of the cabinet company to the bank had increased year by year until it reached something like $350,000 or $375,000

at the time of the failure; and that, with the exception of perhaps $40,000, this was the entire indebtedness of the cabinet company. As already stated, it further appears that from time to time as this indebtedness grew, the cabinet company executed to the bank, or to Mr. Haughey as trustee, for the benefit of the bank, a first mortgage upon its entire plant and property of every nature and description, either directly as a security for the payment of the indebtedness of the bank, or, as in the later mortgages, to secure bonds which were pledged to the bank as collateral to its indebtedness; in some instances, as hereinbefore stated, besides the general pledge, a specific designation being given to cover specific loans. The evidence shows)Trans. p. 105) that from time to time Mr. Haughey went to the factory of the cabinet company, made an examination of its assets and generally informed himself with reference to its condition and its prospects; that he did this with a view solely to the interest of the bank and with a view to its protection; that the defendants always made full and frank exposition of their affairs to him, and, so far as was in their power, complied with his requests in the interest of the bank. The evidence further tends to show, and, as we think, does show, that the defendants knew nothing of the bad debts and embarrassments of the bank, outside of their own business; that down to the failure of the bank they had hoped and expected to be able to go ahead and pay all of their debts; that in fact they had arranged and agreed that they would not only pay all interest, but would soon pay largely on the principal of their indebtedness to the bank. As already stated, the evidence shows that the defendants knew absolutely nothing of the embarrassments of the bank, which, as it turns out, was in a hopeless condition by reason of having, according to the testimony of Mr. Hawkins, a million or more dollars of worthless paper, entirely aside from the indebtedness of the cabinet company and its associates. (Trans., p. 96.)

Upon this state of the evidence, we insisted upon the trial, and still insist, that there was a failure to show a purpose on the part of Mr. Haughey in his transactions with the Indianapolis Cabinet Company to defraud the bank, and much more was there a failure to show such purpose on the part of the defendants.

With this view, the court was asked by the defendants to give to the jury instruction No. 7 and instruction No. 8, severally. Those instructions are in these words:

"No. 7. If upon the whole proof it appears that Mr. Haughey, in permitting or causing the moneys, funds or credits of the bank to be applied to the use of the Indianapolis Cabinet Company at any of the times charged in the indictment, did so, not because he wished to defraud or injure the bank or any other person or party, or deceive the bank examiner, but because he believed that under all the circumstances, so to do was for the best interest of the bank, then, as to such counts for misapplication, your verdict should be not guilty."

"No. 8. If upon all the facts proven in the case it appears that at each of the times at which Mr. Haughey, president of the bank, is charged in the indictment with having made a criminal misapplication of the moneys, funds or credits of the bank, the condition of the bank and the Indianapolis Cabinet Company was such that for the bank to have refused further credit to the cabinet company would probably have resulted in the failure of that company and of the bank, and if it further appears upon all of the evidence that Mr. Haughey, knowing, or in good faith, believing such to be the case, did furnish such further aid to the cabinet company with the *bona fide* hope and intention of saving the bank from disaster and not with the intent to injure the bank or any one else or to deceive the bank examiner, then your verdict should be not guilty as to all counts charging such criminal misapplication of the funds of the bank."

See Transcript, p. 110.

Each of these instructions the court refused to give, and he gave nothing equivalent or similar thereto. In a general way, the court did tell the jury that, in order to a conviction, the intent named in the statute and specified in the indictment must be present, but he wholly failed

and refused to give any instruction applicable to the theory of the case mentioned in our numbers 7 and 8, and, indeed, he sedulously refused throughout to give instructions applicable to any theory looking in the direction of an acquittal. It seems to us that these instructions, 7 and 8, each state a proposition of unquestioned and unquestionable law.

Suppose that in this case a special verdict had been rendered, and that in such special verdict the facts embraced in either or both of these instructions had been embodied as a finding of the jury? Will anybody claim that a judgment in favor of the government could be rendered on such verdict? If not, then, as it seems to us, the refusal to give each of these instructions, which were addressed to a case which the evidence tended to prove, was palpable and reversible error.

The determination of the court to give no instruction especially applicable to the defendants' theory of the case is further shown in the refusal to give either the 11th, 12th or 13th instructions asked by the defendants, which we submit each embody an expression of the law correct in itself and applicable to the proofs in the case. Those three instructions are as follows:

"No. 12. The making of *bona fide* loans of the money of the bank by the president thereof was not a misapplication of the funds of the bank, within the meaning of this statute, even though such loans may have been made to parties who were insolvent and known by the president to be so at the time such loans were made. If, therefore, upon the whole evidence in this case it appears that the moneys, funds and credits of the bank, charged to have been misapplied by the president were in fact *bona fide* loans, even though upon insufficient security, your verdict, upon the counts charging misapplication, must be not guilty."

"No. 12. On behalf of the government it is claimed that the moneys, funds and credits of the bank furnished to the Indianapolis Cabinet Company as charged in the various counts of the indictment for misapplication were not *bona fide* loans, but that the same were wholly fictitious, and the paper upon which they were based

was utterly worthless. On the other hand, the defendants claim that for all of the indebtedness of the Indianapolis Cabinet Company to the bank, the entire property and assets of said cabinet company were liable; first, under the mortgage executed by said cabinet company, and, second, as general debts of that corporation; and they further claim that the assets of said corporation at the time of the failure of the bank and during all the time while such advancements were being made were of the value of several hundred thousand dollars. If upon all the proof it appears that the paper upon which such loans were made was of real and substantial value, and that the bank is now holding and seeking to collect such paper out of the assets of said cabinet company, then you can not hold such paper to be worthless and said loans to be wholly fictitious, and upon such state of the proof, you would not be warranted in basing a verdict of guilty upon the theory that such transactions were not *bona fide* loans.

"13. Whether the transactions by and through which Mr. Haughey let the cabinet company have the moneys, funds and credits under consideration in this case were *bona fide* loans by the bank to the cabinet company, as contended by the defendants, or were simply pretenses used to cover the misapplication of such moneys, funds or credits, as contended by the government, is a question of fact for your exclusive determination on the evidence and under the rules of law as given you by the court." (See Trans., p. 111.)

What adequate reason can be assigned for the refusal of the court to give, especially, instruction No. 13, we are at a loss to discover. The question whether these transactions were *bona fide* loans was the essential, vital question in the case. It was a question of fact, and we had the absolute right to have the jury informed that it was a question of fact and was for their determination. (See Trans., p. 111.)

In the 14th instruction we asked that in considering the question of criminal intent on the part of Mr. Haughey the jury might consider Mr. Haughey's relations to the bank, or whether he was in any way benefited by the loans or advances to the cabinet company; that, if they found that he was, it should weigh against him on the question

of intent, and, if not, it was a circumstance having the opposite tendency. Yet this also was refused.

The fifteenth instruction reads as follows:

"No. 15. If you shall find it to be a fact that said Haughey paid to the cabinet company, and allowed it to receive, the moneys, funds and credits of the bank in excess of ten per cent. of its capital stock, such fact does not of itself sustain the charge of a criminal misapplication of the funds of the bank. It is true the statute provides that no more than ten per cent. of the capital stock of the bank shall be loaned to any one person or party, but it does not make it a crime on the part, either of the bank officers to make, or of the customer to receive, loans in excess of that sum. In order to bring the case within the denunciation of the statute as a crime, it must be shown, not merely that such excessive loan was made, but that it was made with the criminal intent aforesaid, and in order to sustain the charge against the defendants it must be shown that they aided and abetted with the same or like intent." (See Trans., p. 112.)

This instruction we were entitled to have given explicitly and directly, yet it was refused and its equivalent was not given. The court gave the following:

"The willful and criminal misapplication of the moneys, funds and credits of a national bank by its president, as defined in Section 5209, does not include every wrongful or unlawful misapplication of such moneys, funds or credits. There are some unlawful misapplications of the moneys, funds and credits of a national bank which are not made criminal and which are not included in the statute on which the present indictment is based. For example, the statute relating to national banks provides that the amount borrowed from such an association by any person, corporation or company shall at no time exceed one-tenth of the capital stock of such association actually paid in; and that no such association shall make any loan or discount on the security of its own capital stock, or be the purchaser or holder of such shares, unless such security or purchase shall be necessary to prevent loss on a debt previously contracted, and that no such association shall purchase or hold real estate except for certain specified purposes. Now, if the directors of a national bank should permit an individual or company to borrow at one time a sum in excess of one-tenth of its capital stock actually paid in, or should purchase its own capital stock or real estate contrary to the provisions of the law, such acts and expendi-

tures would be unlawful and unauthorized applications of the funds of such association. The remedies provided by law for such wrongful expenditures or such unauthorized use of its funds by the direction of its board of directors, although made for the account and benefit of the bank, are a forfeiture of all the rights, privileges and franchises of the association, and the personal liability of every director who participated in or assented to such use of the funds of the bank for all damages to the association, its shareholders or any other person may sustain in consequence of such unauthorized application." (See Trans., p. 127.)

By indirection and inference, which upon a careful reading might be drawn by a lawyer, it is possibly here stated by the court that a loaning in excess of ten per cent. of the capital stock of the bank to one customer is not specifically included in the denunciation of this statute; yet it is only by such inference, and the statements so made by the court by no means excuse the failure to state the proposition of law embodied in this 15th instruction requested directly and specifically. It was not material that the court should tell the jury what other penalties were prescribed by the statute of the United States for the misfeasances of a bank officer. The defendants had a right to have the jury told that this statute did not apply to the particular misfeasance of over-loans, and this they were denied.

An examination of this part of the charge of the court below will show that it was largely taken from the charge of Judge (now Justice) Jackson in Harper's case, 33d Federal Reporter 477 and 478, and it will hereafter be shown that other parts of the instructions were copied from the same source. But, having copied the extract just given, Judge Baker stops before reaching the explicit statement made by Judge Jackson, that the wrongful acts thus recited were not embraced in this statute. Immediately following the extract above quoted Judge Jackson says:

"But such acts are not criminal offenses. These unlawful applications and expenditures which only involve civil liability do not

constitute willful and criminal misapplications, as described in Section 5209, under which the defendant stands indicted."

That was exactly the statement we asked Judge Baker to give in our 15th instruction, which was refused. Why, refusing that instruction and then making the extract from the instructions of Judge Jackson, the court below should stop at the point he did, we can not explain.

We shall have occasion hereafter to refer to another extract from the instructions of Judge Jackson with omissions equally significant.

X.

The last ten counts of the indictment, as it now stands, the 37th to 46th, both inclusive, are based upon alleged false entries in the books of the bank. (Trans., p. 44–55.)

Each of these counts is based upon transactions of substantially the following character:

The defendants, or some of them, as officers of the Indianapolis Cabinet Company, brought to the bank drafts and bills of said cabinet company, or some of its auxiliary corporations, some of them sight and some time-drafts and bills, and by direction of Mr. Haughey the same were discounted by the bank and the cabinet company was thereupon, by direction of Mr. Haughey, given credit for the proceeds of such discounts, and by his direction the entries showing such credits were made upon the books of the bank.

As applicable to these transactions, we asked the court to give to the jury the 18th and 19th instructions, which are in the following words:

"No. 18. In considering the false entry charges in the indictment, it is necessary that you should know what constitutes a false entry. The books of account of a bank are kept for the purpose of accurately and truly recording the financial transactions of the bank. An entry upon the books of the bank of some alleged transactions which never occurred, or of a transaction which did occur, but which is falsely recorded, would be a false entry. But any

entry in which that which has been done by the officers or agents of the bank is correctly set forth in detail is not a false entry. If, therefore, you find from the evidence, for instance, with reference to the alleged false entry in the 40th count, that the bank had actually given to the cabinet company the credit for $44,000 upon the paper presented by the cabinet company, and had authorized said cabinet company to make its checks against said credit, and that said entry was made upon the books simply as a truthful record of that which had been done, then the same was not a false entry but was and is a true entry, and the indictment, so far as based upon such entry, can not be sustained."

"No. 19. If Mr. Haughey, as president of the bank, received from the cabinet company drafts, bills or notes, which, by reason of the insolvency of the parties, or for any other reason ought not to have been received, and gave to said cabinet company credit therefor, and afterwards caused an entry of such credit to be made upon the books of the bank, then whatever wrong was done in the matter by Mr. Haughey was not in causing such entry to be made, but was, further back, in receiving the paper and giving the credit. Not to have made the entry would have been to commit another wrong, since it was his duty as president of the bank to see that the books should speak the exact truth as to that which he had caused to be done, and, however wrongful may have been his previous act, the making of an exact and truthful record of the same in the books of the bank was and could be no crime under this statute." (See Trans., p. 114.)

If, as we think they clearly did, these instructions embodied correct propositions of law, then the refusal to give them and the giving in place thereof directly antagonistic propositions was bald and reversible error.

As we understand the purpose of the banking law, it is to require the books of the bank to speak the exact truth as to what has been done in the business of the bank. As has been already shown and as the trial judge stated in his instructions, Theodore P. Haughey as president of the bank was invested with all the authority possessed by the Board of Directors in reference to making loans and discounts. (See Trans., pp. 92 and 94.)

Now, the making of loans and discounting paper are not the same as the making of entries on the books. The

making of the loan or the discount, the reception of the note or draft, and agreeing upon the amount for which credit is to be given is one thing. The recording of the result of that transaction upon the books of the bank is another and totally different thing. The making of loans or discounts and giving credit therefor is ordinarily the work of the board of directors; the making of entries is the work of the executive officers and agents of the bank. It may be that a loan or a discount and a giving of credit as a result thereof is unwarranted, is in violation of the law, and good conscience; and yet, if they are done either by the board of directors or by the president or cashier, then the law requires that the history of those transactions shall be recorded upon the books, and such a record is not a false record. Just as well say that the stenographer who writes down a false statement made by a witness makes a false entry or false record, as to say that the making of an entry on the books of a bank which correctly states what has been done is a false entry. Not to make such record, not to state it exactly as it has been done, would be to make false entries, if any entry is made at all. These transactions being had, what else could have been put upon the books? What would have been a true entry as to any one of these transactions? If it be said that the transaction itself was a fraud, the answer is, that is not the question under discussion. The question is whether the entry is true. If it presents a correct record of what has been done, it is not a violation of the statute denouncing false entries.

Suppose that the board of directors, the cashier or president of a bank discounts a note for $5,000, gives credit for the proceeds, but before any entry is made on the books it is discovered that the note is worth only, say, 50 per cent. of its face. In order to avoid a charge of making a false entry, is it necessary that that transaction shall not be recorded as made? At the time the entry is made it is

known that the $5,000 of credit given is excessive by 50 per cent., but the credit was given for the whole $5,000. Now, does not good book-keeping, good law and common honesty require that the transaction shall be recorded exactly as it took place, and that subsequently discovered facts shall be given effect upon the books of the bank by subsequent entries? It seems to us that the construction which makes the crime consist in the entry in this case is simply striking at the shadow and disregarding the wrong itself, if wrong there was. The mistake is in assuming that the discounting the paper, the giving the credit and the making the entry are all one transaction. On the contrary, in almost every instance where paper is discounted and credit given, more or less of the money is paid out on the check of the party receiving the credit before a scratch of a pen is made upon the books. As well say that a note or a mortgage executed as the result of fraud or on a fictitious consideration is a false or counterfeit note or mortgage.

This mistake is carried into the instruction given by the court on this subject. The denunciation of the statute as to false entries is against entries which do not represent transactions which have actually occurred, or which falsely and fraudulently misstate such transactions. The theory of the instructions of the court, however, (Trans., p. 133–4), is that the transactions represented by these so-called false entries were fictitious, because it is alleged that the paper thus presented and discounted did not represent the actual values shown upon its face; yet no one pretends that such paper was wholly fictitious. The Indianapolis Cabinet Company was liable upon all of it and all of its assets were pledged for its payment. According to the testimony offered by the government, the paper was and is worth about fifty cents on a dollar, even in the desperately hard times of 1893 and 1894. It is, of course, easy in retro-

spect, now, to criticise business operations involving so large credits as those of the cabinet company with this bank, but looking forward from 1892, the landscape presented a very different aspect. All then was sunshine and hope. It seems to us that to characterize the credits given by this bank to this great corporation at that time as purely fictitious, and, upon such assumption, in disregard of the fact that the bank now has all these valuable assets, amounting to at least one-half of the debts of the cabinet company, to insist that the entries recording such transactions, just as they occurred, were false entries, within the meaning of this statute, is an utter perversion of the law and the intention of Congress.

XI.

The instructions asked by the defendants, numbered from 23 to 32 inclusive, were addressed to the averments in the various counts of the indictment to the effect that the names of persons alleged to have been defrauded or otherwise connected with the indictments, and of material facts generally but not specifically alleged, were "to the grand jury unknown." In nearly all of the counts there are averments of that kind.

Thus, in the 2d count it is alleged that the misapplication of the funds was made "with intent to convert the same to the use of the Indianapolis Cabinet Company and *to other persons to the grand jurors unknown.*"

A like averment is found in each count of the indictment to and including the 16th, and in some of these counts, as in the 15th, it is alleged that "a more particular description of the moneys, funds and credits alleged to have been misappropriated was to the grand jurors unknown."

Like averments are found in several of the false entry counts.

We asked the court, as a reference to these instructions

will show (Trans., pp. 117, etc.), to tell the jury that these allegations, that names and facts were unknown to the grand jury, were material and issuable allegations, and that if no proof had been offered in support of the same the defendants were entitled to an acquittal as to those counts. Thus, the 24th instruction read as follows:

"No. 24. Each of the 46 counts of this indictment, except the 1st, the 40th, the 41st and the 43d, alleges that certain facts therein referred to are unknown to the grand jury. Thus, the 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th and 12th counts each avers a misapplication of the funds of said bank by said Haughey, with intent to convert the same to the use of the Indianapolis Cabinet Company and to other persons to the grand jury unknown. The averment that the names of these persons were unknown to the grand jurors is a material averment, and is necessary to be proven by the government in order to make out its case in each of said counts, because in each of said counts the charge is of a misapplication of a single, definite, fixed sum with an intent to convert the same to the use, not merely of the cabinet company, but of other persons. If, as a matter of fact, no evidence has been placed before you showing or tending to show that the names of such persons were unknown to the grand jury, then, as to these counts, the government's case has failed."

This is simply a specimen. Other instructions of a similar character were asked, applicable to other counts. It will be observed that this 24th instruction is directed to the 2d, 3d, 4th, 5th, 6th, 7th, 8th, 9th, 10th, 11th and 12th counts, being a part of those upon which the judgment and sentence was entered. They aver that the misapplication was made with intent to convert the funds misapplied to the use of the Indianapolis Cabinet Company and to other persons to the grand jurors unknown.

In Wharton's Criminal Law, Section 251, it is said:

"Where third persons can not be described by name, it is enough to charge them as a 'certain person or persons to the jurors aforesaid unknown,' which is correct, if the party is at the time of the indictment unknown, though he became known afterwards. Thus, an indictment for harboring thieves unknown is sufficient, from the

necessity of the case, and the fair presumption which exists that their names can not be ascertained. So, upon the same ground, if the dead body of a person murdered be found, and it is impossible to discover who he was, an indictment for having killed some one unknown would be good. Nothing is more common when the owner of stolen property is unknown, than to charge him as such. Such cases, however, are exceptions to the general rule, that wherever the name of the party injured exists, it is absolutely necessary to insert it. In an indictment for larceny, though the goods may be said to be the property of persons unknown, if that is actually the case, yet if the owner be really known, the allegation will be improper, and the prisoner must be discharged from that indictment and tried upon a new one, in which the mistake is corrected.

"*It would seem that the allegation that co-defendants are 'unknown' is material and may be traversed under the plea of not guilty.*"

So, in 3d Greenleaf, Section 22, it is said:

"If the person be described as one whose name is to the jurors unknown, and it be proved that he was known, the variance is fatal and the prisoner will be acquitted. But this averment will be supported by proof that the name of the person could not be ascertained by any reasonable diligence."

So, in Blodget *v.* The State, 3d Ind. 403, the indictment charged that the liquor had been sold to a person whose name was unknown to the jurors. It was shown upon the trial that the same witness called to prove the case in court was before the grand jury, and he testified that if asked he could and would have disclosed the name of the person at that time. Held, that the conviction could not be sustained.

In Stone *v.* The State, 30 Ind. 115, the indictment stated that the christian or given name of the defendant was unknown to the grand jury. The court says:

"In this case there is no proof on the subject, and the jury could not form any conclusion as to the truth of the averment that the christian name of the defendant was unknown to the grand jury. For this failure of proof the case must be reversed."

In Commonwealth *v.* Stoddard, 9 Allen 280, the indict-

ment was against a woman for willfully and maliciously exposing, and leaving exposed, helpless and alone in a street in Boston, a child without clothing, shelter, etc. The indictment alleged that the name of the child was to the grand jurors unknown. Judge Gray, speaking for the court, said:

"When the name of a person injured is unknown to the grand jury, it may be so alleged in the indictment and no further description of that person is necessary. But the proof must correspond with the allegations, and unless the traverse jury are satisfied that the name was unknown to the grand jury, the defendant is not to be convicted."

In McLaughlin *v.* The State, 45 Ind. 338, the indictment was for selling liquors in violation of law to numerous and divers persons, then and there intoxicated, etc. It was objected that the indictment was insufficient and it was so held, for failure to state the names of the persons to whom such sales were made. In the discussion of the case the rule is stated that the names of such persons must be given or it must be alleged and proved that they were unknown to the grand jury, and in a full discussion the reasons making such allegations and proofs imperative are set forth. The following from the opinion in that case is well worthy of consideration:

"Assuming that certain sales of intoxicating liquors were proved in this case before the grand jury, how is it shown that the sales thus proved, and on which the grand jury based their finding of the indictment, are the same sales which were proved by the witnesses on the trial of the case before the traverse jury? Is it not evident that the grand jury may have found the indictment upon evidence of certain sales or supposed sales, while the conviction was upon entirely different sales? How is a conviction upon an indictment so indefinite to inure to the subsequent protection of the defendant, should he be again questioned upon the same ground? How can the defendant prepare for his defense? Suppose it shall be charged that he sold to a person intoxicated, or in the habit of getting intoxicated, how can the defendant prepare to try the question whether the person is such or not? Or, if the charge be for selling to an

infant, it may be very important, in order that the defendant may be able to meet the proof of the State on the question of infancy. How can he do this, when he is not informed by the indictment who the infant is, to whom it is alleged the sale was made? And in any and every case, where he is charged with having made a sale in violation of the law, how can he be prepared to meet the charge, unless he is at least informed of the name of the person to whom he is alleged to have made the sale? The period of time within which a prosecution in such case must be commenced is two years. The prosecutor may charge the offense to have been committed on any day within the two years before the finding of the indictment; his proof need not correspond, however, with the time stated in the indictment, but he may prove that the offense was committed on any other day within the two years before the finding of the indictment. How shall the defendant know on what transaction within the two years the State intends to rely? It is evident that it is little less than mockery to furnish the defendant with a copy of such an accusation. In our judgment, the indictment in this case is defective in not defining the offense more particularly so as to make it appear upon what acts of the defendant, supposed to be criminal, the indictment was founded, so as to enable the defendant to prepare for his defense, and to plead the conviction or acquittal in his protection, should he be again indicted for the same offense."

See also State *v.* Long, 103 Indiana 481.

This rule thus so clearly established is just as applicable to the averment of other material facts as to the names or identity of persons, nor is the objection obviated by the fact that the name of one person is given. The indictment alleges that certain names are unknown to the grand jury. It may be that, if this averment had been omitted altogether, and proof had been made as to the cabinet company, it would have been sufficient, but as is said by the Supreme Court of Indiana in McLaughlin's case, upon a verdict rendered upon such an indictment as that now under consideration, in which it is alleged that the intent was to convert the assets to the use of the cabinet company and to other persons unknown, how is it to be known from a general verdict of a jury upon what facts it was based, whether the jury regarded the averments of the intent to

convert to the use of the cabinet company as proven, or the other averment of an intent to convert to the use of parties unknown.

Indeed, another rule of criminal and civil pleading here comes in to solve this question. That rule is that both in civil and criminal cases unnecessary particularity of averment requires corresponding particularity of proof.

Thus, in United States *v.* Brown, 3 McLean 233, a postmaster was indicted for stealing a letter from the mail which contained certain bank notes, etc. The court instructed the jury that it was not necessary to describe the notes particularly, or to state whose property they were, but "where such description is given, and the property is averred to be in an individual, both must be proved as alleged." In support of this the case of Jerome *v.* Whitney, 7 Johnson 321, was cited, where it was held that the declaration on a note, if, instead of stating generally that it was given for value received, the particular consideration is set out, the plaintiff is bound to prove the value according to his averment, and it was further said: "If the prosecutor chooses to state the offense with greater particularity than is required by the statute, he will be bound by the statement and must prove it as laid. 1 Chitty on Pleading 263; Rex *v.* Dawlin, 5 Term 311."

So, in United States *v.* Howard, 3 Sumner p. 12, an indictment for an assault and battery on shipboard, Mr Justice Story says:

> "No allegation, whether it be necessary or unnecessary, whether it be more or less particular, which is descriptive of the identity of that which is legally essential to the charge in the indictment, can ever be rejected as surplusage."

That the names of the parties injured are descriptive of the offense is shown by all the authorities, and is too clear to require argument.

XII.

The 32d instruction asked by the defendants reads as follows:

"No. 32. In the testimony in this case, evidence has been offered on behalf of the government to prove that at times the account of the Indianapolis Cabinet Company, with the Indianapolis National Bank, was largely overdrawn, that is, that the cabinet company had drawn out from the bank a greater sum of money or other funds than it had deposited. If you shall find from the evidence that such was the fact and that Mr. Haughey, President, permitted such overdraft to be made, that fact alone would not be sufficient to show any criminal intent on the part of Mr. Haughey. While an overdraft is not, perhaps, a regular and approved method of making loans from a bank, yet loans are not infrequently made by banks in that form, and, in the absence of other criminating circumstances, are not within the denunciation of the statute upon which this transaction is based."

This instruction was refused, and nothing equivalent thereto, or covering the proposition of law therein stated, was given to the jury. There was a great deal of evidence placed before the jury by the government (Trans., p. 93-4), showing that the defendants, as officers of the Indianapolis Cabinet Company, had made, and that Mr. Haughey, as president of the bank, had allowed them to make, large overdrafts on the account of said cabinet company in said bank. It is, of course, undisputed that such overdrafts, in themselves, were not a violation of Section 5209. They were, nevertheless, part and parcel of the wrongs charged upon the cabinet company and the defendants in this transaction, and it seems clear to us that we had a right to have the jury told that such overdrafts in themselves were not within the denunciation of this statute, and that they alone were not sufficient to bring home, either to Mr. Haughey or to the defendants, the criminal intent denounced by this statute.

The 34th instruction asked by the defendants, was as follows:

"No. 34. Some evidence has been given in this case tending to

prove that the defendants, as officers of the Indianapolis Cabinet Company, and some of the other corporations organized as subsidiary thereto, have made drafts for moneys upon persons and parties when no money was due or owing by such drawee to the drawer. If you find from the evidence that such drafts were made, the same not being drawn against values or upon parties owing the money so drawn for, such fact will not of itself warrant the conclusion that such drafts were either wholly fictitious or fraudulent, especially if you shall further find that such drafts were made for accommodation by an understanding between the drawer and drawee. And if you shall find further that such drafts or paper, if placed in the bank for discount, were in whole or in substantial part secured by bonds or other collateral, or were of real, substantial value, this fact will be a further circumstance for your consideration tending to show the good faith of such transactions with the bank."

As will be seen, this instruction embodies the proposition: first, that, in order to make *bona fide*, bankable paper, paper which a bank is authorized to discount, it is not essential that such paper shall be drawn against actual values, or that the drawee shall actually owe the drawer the money represented by such draft; second, that, if such drafts were in whole or in substantial part secured by bonds or other collateral or were of real, substantial value, this would be a circumstance for the consideration of the jury upon the question of the good faith of the transaction.

Not only did the court refuse to give this instruction, but nothing similar thereto was given. The court did tell the jury (Trans., p. 125) that

"The acceptance by any officer (of a bank) of a bill of exchange or draft is an unlawful act unless it is drawn in good faith against actually existing values."

And again:

"If the Indianapolis Cabinet Company obtained credit upon the books of the bank by making and negotiating to it notes, drafts and other paper which Haughey and the defendants knew did not represent actual *values*, with intent to defraud the bank, such

credits gave the cabinet company no right to moneys represented by such credits." (Trans., p. 134.)

There had been, in the course of the trial, much evidence and discussion with reference to accommodation paper, as contradistinguished from paper drawn against actual values, and it was for the purpose of letting the jury understand that it was just as proper for Mr. Haughey or any other bank officer to accept *bona fide* accommodation paper and give credit for the same as paper drawn against actual values, that we requested this instruction to be given.

The court will notice that in these extracts from the charge of Judge Baker the language used is "actual values," not "value," and naturally the jury would understand the judge to be referring to paper drawn against actual values rather than paper which, by reason of the character of the parties thereto, was good paper. Under such circumstances, therefore, to refuse to give the instruction we asked was a wrong upon the defendants, and reversible error.

The 36th instruction asked by the defendants and refused by the court reads as follows:

"No. 36. The counts of the indictment relating to misapplication charge a misapplication of the moneys, funds and credits of the bank. A charge of misapplication of the credits of the bank is not sustained by merely showing that the bank gave to the cabinet company credit to which it was not entitled, unless it is also shown that as a result of such credit the cabinet company was enabled to and did withdraw from the bank moneys, funds or resources of some kind. Thus, evidence of the giving by the cabinet company and the receiving by the bank of renewal paper, upon which nothing was withdrawn from the bank, would not sustain the charge of criminal misapplication of the credits of the bank."

The bill of exceptions shows (Trans., p. 107) that the government put in evidence all the checks drawn by the Indianapolis Cabinet Company on the Indianapolis National Bank from January 1st, 1891, to July 25th, 1893;

it further appears that a very large number of these checks were given upon the renewal of notes, drafts, etc., which had been given to the bank prior to December, 1890, without any money passing at all, and which were, therefore, barred by the statute of limitations. It was certainly the right of the defendants to have the jury instructed that as to these renewal transactions, upon which no money or other funds were withdrawn from the bank, the charge of criminal misapplication was not sustained. Yet neither was this instruction given, nor anything equivalent thereto, or upon that subject.

XIII.

The 44th instruction asked by the defendants and refused by the court, was in these words:

"The law presumes that persons charged with crime are innocent until they are proven by competent evidence to be guilty. To the benefit of this presumption the defendants are all entitled, and this presumption stands as their sufficient protection, unless it has been removed by evidence proving their guilt beyond a reasonable doubt." (Tran., p. 123.)

It is incredible that any court trying an indictment for crime should have refused this instruction, and should have refused to give any instruction at all with regard to the presumption of innocence. And yet that is just what was done in this case.

In 1st Greenleaf's Evidence, at Section 34, it is said:

"As men do not generally violate the penal code, the law presumes every man innocent; but some men do transgress it, and, therefore, evidence is received to repel this presumption. *This legal presumption of innocence is to be regarded by the jury, in every case, as matter of evidence, to the benefit of which the party is entitled.* And where a criminal charge is to be proved by circumstantial evidence, the proof ought to be not only consistent with the prisoner's guilt, but inconsistent with any other rational conclusion."

In Section 35 of the same work, it is said:

"This presumption of innocence is so strong that even where the

guilt can be established only by proving a negative, that negative must, in most cases, be proved by the party alleging the guilt; yet the general rule of law devolves the burden of proof on the party holding the affirmative."

And in the same section it is said:

"In some cases the presumption of innocence has been deemed sufficiently strong to overthrow the presumption of life."

In Jones *v.* Simpson, 116 U. S., on page 615, it is said:

"The law presumes, in the absence of evidence to the contrary, that the business transactions of every man are done in good faith and for an honest purpose, and any one who alleges that such acts are done in bad faith, or for a dishonest and fraudulent purpose, takes upon himself the business of showing the same."

In Thompson on Trials, Vol. 2, Sec. 2461, it is said:

"The charity of the law and its solicitude for the safety of the innocent are such that an artificial presumption of innocence attends a person accused of crime throughout every stage of the trial until it is overcome by the degree of proof hereafter stated. This presumption is in the nature of evidence in his favor. A knowledge of it should, therefore, be communicated to the jury. Accordingly, it is the duty of the judge in all jurisdictions, when requested, and in some instances when not requested, to explain it to the jury in his charge."

Instead of placing before the jury the simple statement of the law embodied in the instruction, and thus giving the defendants the benefit of what has been held to be the strongest of all rebuttable presumptions (Guetig *v.* State, 66 Ind. 94), the court did make to the jury this statement:

"To justify you in returning a verdict of guilty, the evidence must be of such a character to satisfy your judgment to the exclusion of every reasonable doubt. If, therefore, you can reconcile the evidence with any reasonable hypothesis consistent with the defendants' innocence, it is your duty to do so and in that case find the defendants not guilty. *And if, after weighing all the proofs and looking only to the proofs, you impartially and honestly entertain a belief that the defendants may be innocent of the offenses charged against them, they are entitled to the benefit of that doubt and you should acquit them.* It is not meant by this that the proof should establish their guilt to an abso-

lute certainty, but merely that you should not convict unless from all the evidence you believe the defendants are guilty beyond a reasonable doubt. Speculative notions or possibilities resting upon mere conjecture, not arising or deducible from the proof, or the want of it, should not be confounded with a reasonable doubt." (Trans. p. 135.)

A careful scrutiny of this extract from the judge's charge makes it plain that it was his purpose that the jury should understand, and the jury could not fail to understand, that they were to consider only the proofs introduced as such for their consideration. He says: "If, after weighing all the proofs, *and looking only to the proofs*, you impartially and honestly entertain," etc. Not an intimation, from beginning to end, in the instructions that the defendants were entitled to any protection by reason of the fact that the law presumed innocence rather than guilt. The assumption is that the defendants at the commencement of the trial stood before the jury in a state of absolute legal nakedness, clothed with no garb of innocence, and that their fate at the hands of the jury must be determined solely—the garb placed on them—by proofs introduced upon the one side or the other.

In Densmore *v.* The State, 67 Ind. 306, the court in his instructions had told the jury "that the presumption of innocence continues until the proof of guilt is made clear and conclusive, leaving no other reasonable inference and excluding all reasonable doubt;" and thereafter, in the course of the charge, said: "A reasonable doubt is one suggested by or arising out of the proof made and which after a full and fair consideration of all the evidence *pro* and *con* remains in the mind, causing some degree of uncertainty as to the alleged crime." The Supreme Court, speaking by Judge Worden, says:

"Is it true that a reasonable doubt must be one suggested by or arising out of the proof made? It seems to us that this definition is much too narrow and limited. The words 'suggested by or arising out of the proof made,' imply that the doubt must be such an

one as is created or produced by the proof made. That they were used to convey this idea is shown by the latter part of the charge in which the court said: 'It is not a reasonable doubt which may be raised by conjecturing something for which there is no foundation or suggestion in the evidence adduced.' It is thus seen that according to the charge it is the proof made or evidence adduced that is the foundation for the reasonable doubt. This excludes all reasonable doubts that may arise from the lack or want of evidence. The State may make out a case *prima facie* beyond a reasonable doubt, but the defendant's evidence may be such as to raise a reasonable doubt of his guilt. The charge may have been drawn with a view to such a case, but, on the other hand, the lack of evidence on the part of the State may leave a reasonable doubt as to the defendant's guilt; and it is not the law, we think, that a reasonable doubt may not be raised upon the conjecture of the defendant's innocence, though there is nothing in the evidence adduced that furnishes a foundation for or suggestion of the conjecture. The evidence adduced may have no tendency whatever to show the defendant's innocence, and yet it may fail utterly to show his guilt."

It will be observed that in the part of the instruction of the trial court in this case, above quoted, he tells the jury that if they honestly entertain the belief that the defendants may be innocent of the charges against them, they are entitled to the benefit of that doubt, "and you should acquit them." According to the quotation from Judge Worden, on the other hand, it is not necessary that the doubts of the jury shall have ripened into a belief. It is sufficient if it is a doubt, and to the benefit of that doubt the defendants were entitled.

So, in Wright *v.* The State, 69 Ind., on page 165, the court, speaking by Judge Niblack, says:

"So much of the instructions above set out as limited a reasonable doubt to something which is suggested by, or arises from, or springs out of, the evidence adduced, gave, what appears to us to have been, a too narrow definition of that which is implied by a reasonable doubt. A reasonable doubt may arise from a want of evidence as to some fact having a natural connection with the cause. It has reference to that uncertain condition of the mind which may remain after considering what has not been proven as well as that which has."

To the same effect are:

Batten *v.* The State, 80 Indiana 394.
Kennedy *v.* The State, 107 Indiana 144.
Schusler *v.* The State, 29 Indiana 394.
Holmes *v.* The State, 9 Tex. App. 314.
McElvin *v.* The State, 30 Georgia 869.

As will be seen, the case at bar is far within the rule laid down by Judge Worden in Densmore's case, *supra*, and thus followed and approved. In Densmore's case the judge had, as already shown, correctly stated to the jury that the presumption of innocence attended the defendants all through the trial, and yet the limitation of the reasonable doubt to matters arising out of the evidence was held erroneous. Here no reference was made, from beginning to end of the instructions, by the court to the presumption of innocence.

But the refusal of this charge and what was given instead, as above stated, was by no means all nor the worst of what was said by the judge upon this subject, as shown by the following:

"Every person is presumed to intend the natural and ordinary consequences of his own acts. Hence, if the natural and ordinary consequences of the acts of Haughey and the defendants, as shown by the evidence, were to injure and defraud the bank or to deceive and defraud any officer of the bank, you will be authorized to find that such was their intent, even though they may have been injured thereby. I do not wish to be understood as meaning that the intent to injure, deceive or defraud is conclusively established by the simple proof of the doing of the acts which result in injury. What I do mean is this: that when the prohibited acts are knowingly and intentionally done and their natural and legitimate consequences are to produce injury to the bank or to benefit the wrongdoer, the intent to injure, deceive or defraud is thereby sufficiently established to cast on the accused the burden of showing that their purpose was lawful and their acts legitimate." (Trans., p. 134–5.)

In other words, the proposition is that, the government having proved the doing of the prohibited acts, the burden of proof is shifted upon the defendants to establish that

their purpose was lawful and their acts legitimate. The court refused to instruct the jury that any presumption of innocence attends the defendants, and then does instruct the jury that upon proof of certain prohibited acts the burden is shifted upon the defendants thenceforward to prove their innocence. The refusal to give the one instruction and the giving of the other result in the infliction of a double wrong.

We think this instruction as to the shifting of the burden of proof in a matter of this kind is not sanctioned by any case in a court of last resort.

In Chaffee *v.* The United States, 18 Wall. 516, an action for a statutory penalty, instructions were given that if the government had made a *prima facie* case and it appeared that the defendants had kept books which, if produced, would have thrown light upon the subject and they failed to produce them, the burden of proof would be thrown upon the defendants. Mr. Justice Field, speaking for this court, said:

"The purport of all this was to tell the jury that, although the defendants must be proved guilty beyond a reasonable doubt, yet, if the government had made out a *prima facie* case against them, not one free from all doubt, but one which disclosed circumstances requiring explanation, and the defendants did not explain, the perplexing question of their guilt need not disturb the minds of the jurors; their silence supplied in the presumptions of the law that full proof which should dispel all reasonable doubt. In other words, the court instructed the jury, in substance, that the government need only prove that the defendants were presumptively guilty, and the duty thereupon devolved upon them to establish their innocence, and if they did not they were guilty beyond a reasonable doubt.

"We do not think it at all necessary to go into any argument to show the error of this instruction. The error is palpable on its statement. All the authorities condemn it."

Citing

Doty *v.* State, 7 Blackf. 427.

State *v.* Flye, 26 Maine 312.

Commonwealth *v.* McKie, 1 Gray 61.

So, in Lilienthal's Tobacco *v.* The United States, 97th U. S. 266, which was also a case of forfeiture, Mr. Justice Clifford, says:

"In criminal cases the true rule is that the burden of proof never shifts; that in all cases, before a conviction can be had, the jury must be satisfied from the evidence, beyond a reasonable doubt, of the affirmative of the issue presented in the accusation that the defendant is guilty in the manner and form as charged in the indictment."

Citing numerous authorities.

"Text writers of the highest authority state that there is a distinction between civil and criminal cases in respect to the degree or quantum of evidence necessary to justify the jury in finding their verdict. In civil cases their duty is to weigh the evidence carefully, and to find for the party in whose favor it preponderates; but in criminal trials the party accused is entitled to the legal presumption in favor of innocence, which, in doubtful cases, is always sufficient to turn the scale in his favor."

So, in United States *v.* Babcock, 3d Dillon, on page 621, Judge Dillon says:

"The burden of proof does not shift in criminal cases. It is on the prosecution throughout to establish the defendant's guilt by the evidence, and in criminal cases, the defendant not being permitted to testify, can not be called upon to explain or produce any proof until the prosecution, by the evidence it actually produces, establishes the defendant's guilt beyond a reasonable doubt. Chaffee *v.* United States, 18 Wall. 516."

The same rule is laid down by Mr. Justice Curtis in
Mingo's Case, 2 Curtis 1; and
Armstrong's Case, 2 Curtis 446.

There are, it is true, some cases holding that, where the prisoner sets up as a defense some matters apart from and independent of the facts which the government is bound to prove in order to make out a case, the burden of proof is upon him to prove such facts.

Thus, it has been held in some States that where the defendant relies upon insanity as a defense he may be

required to prove the same. But in all cases where the facts relied on in defense are part of the *res gestæ*, and where the intent is a part of the offense which the government is required to prove, it is held that the burden does not shift.

Thus, in The Commonwealth *v.* McKie, 1 Gray 61, a prosecution for an assault and battery with a dangerous weapon, Justice Bigelow, speaking for the court, says:

"If the act charged is justifiable or excusable, no criminal act has been committed, and the allegations in the indictment have not been proved, and this makes a broad distinction in the application of the rule of the burden of proof to civil and criminal cases. In the former, matters of justification or excuse must be specially pleaded in order to be shown in evidence, and the defendant is, therefore, by the form of his plea, obliged to aver an affirmative, and thereby to assume the burden of establishing it by proof; while, in the latter, all such matters are open, under the general issue, and the affirmative, namely, proof of the crime charged, remains in all stages of the case upon the government."

In the Commonwealth *v.* York, 9 Metc., a trial for murder, it was held by a majority of the court that, the killing being shown, the presumption was that it was malicious, and an act of murder, and proof of matter of excuse or extenuation lies upon the defendant. From this opinion, however, Mr. Justice Wilde dissented, and it is significant that the Supreme Court of the United States, in Lilienthal's case, refers to this dissenting opinion, its citation being to page 125, where it commences.

In the Commonwealth *v.* Webster, 5 Cushing 295, it is held that, the fact of the killing being first proved, all the circumstances of accident, necessity or infirmity are to be satisfactorily established by the party charged *unless they arise out of the evidence produced against him.*"

Greenleaf on Evidence, Volume I, Section 81b, lays down the law as follows:

"It would seem to be the true rule in criminal cases, though

eral Courts and in the courts of most of the States, that in a criminal case the burden of proof never shifts; and even in those States which hold otherwise, it is held to shift only when the defendant introduces some independent matter of defense, not growing out of or connected with the facts on which the charge is based and on which the government relies for a conviction, as in the case of an alibi, a former conviction, license, and, in some cases, insanity. But we think in no well-considered case is it held that in a case like the present, where the intent is a part of the statutory crime, and where it is claimed that the intent is to be inferred from proof of the doing of the prohibited acts, that the burden of proof ever shifts from the government to the defendants.

These observations of Judge Baker with reference to the burden of proof are extracted from the charge of Judge Jackson in Harper's case, 33 F. R., pp. 481 and 482. But, as heretofore suggested, Judge Jackson was careful to make some qualifications in his charge. Thus, immediately following the sentence in which the jury is told "that when the prohibited act is knowingly and intentionally done and its natural and legitimate consequence is to produce injury to the association or benefit to the wrong-doer, the intent to injure or defraud is thereby sufficiently established to cast upon the accused the burden of showing that his purpose was lawful and his acts legitimate," in the charge of Judge Jackson is the following:

"I have said also in defining these crimes that you must be satisfied from the proof before you beyond a reasonable doubt that they were committed by the defendants as charged. That needs some explanation, perhaps. In civil suits, mere preponderance of evidence will ordinarily turn the scale in favor of the party on whose side it exists. But in criminal cases, with the presumption of innocence which the law makes in favor of the prisoner on trial, something more is required than a mere preponderance or balance of proof against him in order to warrant a conviction."

In other words, while we think it clear that Judge Jackson's charge as given is at variance with the authorities, and can not be sustained, yet he thought it necessary to give, and did give, to the jury the statement that the defendant was attended by the presumption of innocence, which Judge Baker refused to give, and which, singularly enough, he omitted to include in his extract from the charge of Judge Jackson.

XIV.

So far, we have dwelt upon this "burden of proof" instruction given by the court only as aggravating and intensifying the error in refusing to give the instruction asked by the defendants as to the presumption of innocence. But the giving of this instruction was in itself independent and grievous error, necessarily hurtful to the defendants and entitling them to a new trial at the hands of this court. The authorities above cited make this clear. The only question remaining, therefore, is whether the exception is properly reserved.

Rule 4 of this court reads as follows:

"The judges of the circuit and district courts shall not allow any bills of exceptions which shall contain the charge of the court at large to the jury in trials at common law upon any general exception to the whole of such charge, but the party excepting shall be required to state distinctly the matters of law to which he excepts; and those matters of law, and those only, shall be inserted in the bill of exceptions and allowed by the court."

At the conclusion of the judge's charge, and just before the retirement of the jury in this case, as shown by the bill of exceptions (Trans., p. 137), the following proceedings were had:

And thereupon, before the retirement of the jury, the defendants and each of them did except, in the manner hereinafter stated, to the giving of each of the parts of said instructions so given, hereinafter set forth, and were al-

lowed 120 days in which to file their bill of exceptions, such parts of instructions so excepted to and such reasons, so far as then written, being in the words and figures as hereinafter set out.

Be it further remembered, that thereupon, before the retirement of the jury, the following proceedings were had and statements made by the court and counsel for defendants, to wit:

The Court—Gentlemen of the jury, the bailiff will have you in charge, and at supper-time you will be permitted to separate, bearing in mind the very great importance of saying nothing during your separation to anybody about the state of your deliberations, or to mention anything touching the case, and allow nobody to speak to you about the case; keep your minds free, unembarrassed from any outside influences; and when you are through with your supper return to your room for further deliberation, unless you shall have agreed upon a verdict. I will have you brought in, if you shall have not agreed by that time, in court at nine o'clock this evening for the purpose of giving further directions at that time. If it is the desire of the counsel for the defendants, or for the government, to reserve any exceptions to the charges given or refused, the practice in this court requires that that should be done before the jury retires.

Mr. Miller—It is, of course, if your honor please, desired on behalf of the defendants, to reserve exceptions to the refusal of such instructions as were requested and refused, and to parts of the instructions given. Without having a little time to examine those instructions, it is impossible for us now to designate the particular parts. We would like to have time to look at them for that purpose.

The Court—What length of time would you desire?

Mr. Miller—I do not know, if your honor please, how long it will take; it has taken an hour to read them.

Mr. Duncan—They can be made, when made, as of this time, with permission of the court.

The Court—Except in so far as any mere verbal changes are concerned, which, if the court's attention was drawn to, it would at once correct, I have no objection to that method of procedure.

Mr. Miller—Of course, anything that is formal, of that character that don't go to the substance of the matter, we should not expect to insist on; but, as your honor can see, it is simply impossible for us, from hearing the instructions read for an hour, to select the parts.

The Court—There are the instructions you prepared (indicating), and these instructions I do not care to have mislaid or lost (indicating).

Mr. Miller—No, sir; of course not. For that matter, every syllable of them has been taken down by two stenographers here; all your instructions as you read them, so that there can't be any possibility of any trouble about them. We will take them and make—

The Court—Where is the bailiff? Mr. Taylor, you may take these forms of verdict and the indictment. Gentlemen of the jury, you may now retire with your bailiff.

That during said proceedings and the making of such statements, the Assistant District Attorney was present (the District Attorney being absent from the court room at the time), heard said conversation and assented to said arrangement; that thereupon the jury retired at a few minutes after three o'clock P. M., in charge of the bailiff, to consider of their verdict. Whereupon, by permission of the court, the attorneys for defendants took said instructions so given by the court, which were typewritten, to their office and noted thereon, by enclosing the same in parentheses marked with pencil, the parts of such instructions given by the court to which exceptions were taken,

said parts respectively being numbered, which parts so excepted to and numbered are hereinafter set forth.

That at nine o'clock P. M. of the same day counsel for defendants returned to the court room, bringing said instructions given by the court so marked as aforesaid, and handed them to the judge in open court, saying that the parts of the instructions marked in parentheses and numbered were the parts to which the defendants excepted; that immediately thereafter the jury was brought in and the court having inquired whether they had agreed upon a verdict, and being answered in the negative, thereupon informed them that he would be about, within call, until eleven o'clock P. M. to receive a verdict if they agreed before that time; otherwise they might seal their verdict and bring the same into court at nine o'clock on Monday morning, it being then Saturday evening; that thereupon the jury again retired and, not having agreed prior to eleven o'clock, continued their deliberations until about nine o'clock on Sunday morning, when, having agreed, they prepared their verdict, sealed the same and delivered it to their foreman and, separating, again assembled at nine o'clock on Monday morning in court and delivered their verdict as otherwise set out in the record. And, thereupon, the court granted the defendants 120 days in which to file their bill of exceptions.

That afterwards, to wit, on the same day, May 28th, 1894, the defendants had the parts of said instructions given by the court so excepted to written out in full and at the end of each assigned in part the grounds of their objections thereto, said parts of instructions with the exceptions so formally noted in writing being, on May 28th, 1894, by leave of court, filed as of May 26th, 1894, and the same being in the words and figures following, to wit:

Thereupon follow the written exceptions filed to the instructions given by the court, being numbered from 1 to 27, both inclusive. (Trans. pp. 139, etc.)

One of said exceptions, being No. 22, is addressed to the "burden of proof" instruction, which is as follows:

"I do not wish to be understood as meaning that the intent to injure, deceive or defraud is conclusively established by the simple proof of the doing of the prohibited acts which result in injury. What I do mean is this: that, when the prohibited acts are knowingly and intentionally done and their natural and legitimate consequences are to produce injury to the bank or to benefit the wrong-doer, the intent to injure, deceive or defraud is thereby sufficiently established to cast upon the accused the burden of showing that their purpose was lawful and their acts legitimate."

(Trans. p. 144.)

When the bill of exceptions came to be prepared, it was prepared in accordance with the agreement made before the retirement of the jury, in open court, to the effect that the exceptions when particularized should be noted as of that time. But, the attention of the court having been called to some of the authorities upon the question of burden of proof upon the hearing of a motion for a new trial, it was announced by the court that the bill of exceptions would not be signed and filed under that arrangement unless the defendants would forego this 22d exception, the court claiming that the "burden of proof" instruction was a matter of "*mere verbal error*" which he reserved the right to correct under the term "mere verbal changes."

As the defendants and their counsel well knew that the question involved in this instruction was one upon which there has been no little controversy in the courts and among text-writers, and that the instruction upon this point had been copied verbatim from Harper's case in 33d Federal Reporter, as above stated, a case which the court had been studying during the entire trial, and as they could not see in it a mere verbal error, they could not consent to forego said exception, and thereupon the court invoked the 4th rule of this court, *supra*, and the

recent decision of the Circuit Court of Appeals for the 8th Circuit in Price *v.* Parkhurst, 10th U. S. App. 497.

In this last cited case the question, and the only question, was whether a general exception to a whole charge was sufficient. Quoting the 10th rule, Judge Caldwell says:

> "This rule was designed to put an end to the practice of allowing bills of exception like the one in this case. It matters not that the judge may be willing to consent to such a bill; he can not waive the bill so far as it relates to specific exceptions. The rule is not made for the judge's personal protection or benefit, but for the protection of suitors and the advancement of justice. It is the duty of the party excepting to call the attention of the court distinctly to the portions of the charge he excepts to, and this must be done before the cause is finally submitted to the jury, to the end that the court may have an opportunity to correct or explain the parts of the charge excepted to if it seems proper to do so."

Thereupon the court, reinforcing his disinclination by an alleged disability under the rule, drove us to taking a bill of exceptions as above set forth, stating the facts just as they occurred and as they were taken down by the stenographer, instead of taking the same as per agreement before the retirement of the jury.

We do not question at all that rule 4 prescribes a proper rule of practice, or that the same has been repeatedly upheld by the decisions of this court, but we do insist that the application of the same to the case at bar under the circumstances operates as a fraud upon our clients:

1. We do not care to argue at all the claim made by the trial court that the "burden of proof" instruction was a mere verbal error and matter subject to "mere verbal changes." We leave that without argument, simply asking this court, as we asked the court below, to suggest the "mere verbal changes" which would render the instruction good law.

2. As to the proposition that the court below could not, as suggested in the decision of Judge Caldwell, legally

consent to have the record show that the exceptions were taken as agreed, we call attention to the fact that, according to the decisions of this court, the common practice is to file bills of exception *nunc pro tunc*.

In Walton *v.* The United States, 9 Wheaton, on page 657, this courts says:

"It is a settled principle that no bill of exceptions is valid which is not for matter excepted to at the trial. We do not mean to say that it is necessary (and, in point of practice we know it to be otherwise), that the bill of exceptions should be formally drawn and signed before the trial is at an end. It will be sufficient, if the exception be taken at the trial, and noted by the court, with the requisite certainty. And it may afterwards, during the term, according to the rules of the court, be reduced to form and signed by the judge; and so, in fact, is the general practice. But in all such cases the bill of exceptions is signed *nunc pro tunc*, and it purports on its face to be the same as if actually reduced to form and signed pending the trial. And it would be a fatal error if it were to appear otherwise, for the original authority under which bills of exceptions were allowed, has always been considered to be restricted to matters of exception taken pending the trial and ascertained before the verdict."

In United States *v.* Breitling, 20 Howard 252, this court says:

"It is always in the power of the court to suspend its own rules, or to except a particular case from its operation, whenever the purposes of justice require it. The attention of this court has upon several occasions been called to this subject and the rule established by its decisions will be found to be this: the exception must show that it was taken and reserved by the party at the trial, but it may be drawn out in form and sealed by the judge afterwards. This point was directly decided in the case of Phelps *v.* Mayer, 15 How. 160; and again, in Turner *v.* Yates, 16 How. 28. And the time within which it may be drawn out and presented to the court must depend on its rules and practice, and on its own judicial discretion. In the case before us the judge who tried the case has deemed it his duty to seal and certify the exception to this court; and under the circumstances stated in the exception and the note we think he was right in doing so and that this exception is legally before this court as a part of the record of the proceedings of the court below."

In that case the note referred to showed that the bill of exceptions was presented, and handed to the United States Attorney before court adjourned, but that the same was not signed until a considerable time after the court adjourned, no order having been made extending the time for filing a bill of exceptions.

Under the rules and decisions of this court, if they are to be held iron and inflexible rules, therefore, the bill of exceptions in Breitling's case was not filed in time and was not a part of the record. Yet this court held otherwise; in other words, held, as is decided in Mueller *v.* Ehlers, 91 U. S. 249, that under extraordinary circumstances and for the advancement of justice, the rule may be disregarded, as was done in the Walton case.

Thus, in Hunnicutt *v.* Peyton, 102 U. S., on page 353, it appears that there was a rule of court as follows:

"No bill of exceptions will be signed unless presented to the judge within five days after the close of the trial, unless further time be allowed by the court."

On the 17th of February the verdict was rendered and judgment entered. On the 1st of March the court made an order extending the time for presenting and filing the bill of exceptions, which were presented on that day and filed. Justice Strong, speaking for the court, says:

"It is now insisted that the bill of exceptions can not be considered a part of the record, and that they are not properly here for review. For this, several reasons are advanced, the first of which is, that the presentation to the judge was not in the time prescribed by the rule of the court. But the rule requiring the presentation of bills for the signature of the judge within five days is not a rule which controls his action. He may depart from it in order to effectuate justice. Stanton *v.* Embry, 93 U. S. 548. It is a direction to the parties, and it expressly reserves the power to enlarge the time."

It is proper to say that this decision in Hunnicutt's case modifies the decision in Walton's case, *supra*, but not in so far as it affects the power of the court to vary its rules.

This practice of insisting upon the strict letter of rules and laws at the expense of justice and humanity is not new. Nearly two thousand years ago a class of eminently respectable gentlemen insisted that the healing of withered hands on the Sabbath day was a violation of rules and law. Yet it was held that there was an authority higher than any rule. And so we insist that this court, having made this rule, and finding that in a particular case it is invoked in the interest of injustice, will show that the power that made may and, when necessary, will modify the rule to prevent such a result.

It will be noted that the requirement that the exception be particularized is not within the letter of rule 4, but we do not question that it is within the rule as repeatedly adjudged by this court. We say, however, that under the authorities cited it was entirely competent for the trial court to make the arrangement which was made with reference to the filing of the exceptions *nunc pro tunc;* or, if it shall be insisted that, that being a rule of this court, could not be modified by the District Court, then we say that the matter is entirely in the hands of this court, and the rule ought not, and we believe will not be used for the purpose of promoting injustice.

This court will note that the record shows that we asked for time in which to particularize our exceptions. To such time we were entitled, as matter of law.

Price *v.* Parkhurst, *supra.*

Instead of giving us such time, the court entered into the arrangement as recited, and immediately sent out the jury. What could the defendants or their counsel do? Were they bound to assume that the court would not carry out the arrangement made, and except to his action in sending out the jury? To so hold is to put between court and counsel an element of distrust hitherto unknown and pregnant with immeasurable mischief.

3. But we insist that we are strictly within the rule.

The purpose of the requirement that the attention of the court be called to the parts of the instructions excepted to, before the case is finally submitted to the jury, is that the court may, if so inclined, correct the same. The record in this case shows that at nine o'clock in the evening of the same day on which the jury was instructed, the attention of the court was distinctly called to this exception, the same being noted in parentheses and marked (Trans., 138 and 139). It further shows that, after the attention of the court was called to the same the jury was brought in, and directions given to them with reference to their deliberations; that the court then told them that he would be about for two hours, until eleven o'clock, within call. The record also shows that the jury did not agree that night and did not agree until nine o'clock the following morning, twelve hours after the attention of the court was so called to this instruction, and that a verdict was not returned until twenty-four hours later still.

Under these circumstances, the reason for requiring the exceptions to be particularized before the first retirement of the jury utterly fails. It was competent for the court to have modified this instruction, if inclined to do so, when the jury was before him after the same was called to his attention, or to have called them in and made such modification before they had agreed, or at any time before their verdict was returned. This was not done, and to invoke such a construction of the rule for the purpose of depriving the defendants of the benefit of this exception is to make it an instrument of injustice and not of justice. In the very decision, Price *v.* Parkhurst, invoked by the trial judge as authority for his action, Judge Caldwell says, at page 500:

"No court will refuse a party time and opportunity to point out distinctly his exceptions to the charge before the case is *finally* given to the jury."

This case was not *finally* given to the jury, certainly,

until after the jury were called in by the court, and we insist that the true rule in such case is, that, inasmuch as the court may call the jury in at any time before verdict and then change its instructions, it is sufficient to call his attention to the same while the jury is out, especially under such circumstances as in the case at bar. No one will dispute that, if the judge discovers that he has made an error, it is competent for him to recall the jury at any time before verdict and correct it. No one will dispute that, if his attention is called by counsel to an error in his instructions, either in giving or in refusing to give, before the jury returns, it is his duty then to call the jury in and correct the same.

Upon principle, the rule seems to be that an exception to instructions must be taken during the trial and before verdict, the reason being that an opportunity must be given to the court, after notice of the exception, to revise or change the instruction, and such very clearly, we think, is also the rule upon the authorities.

The right to take a bill of exceptions did not exist at common law, but is derived from the Statute of Westminster II, 13 Edward I, (c. 31). This statute, so far as it touches this subject, is set out in 2d Bacon's Abridgement, title "bill of exceptions," and is as follows:

"When one impleaded before any of the justices alleges an exception, praying they will allow it; and if they will not, if he that alleges the exception writes the same, and requires the justices will put to their seals, the justices shall do so; and, if one will not, another shall; and if, upon complaint made of the justice, the King cause the record to come before him, and the exception be not found in the roll, and the plaintiff show the written exception, with the seal of the justices thereto put, the justice shall be commanded to appear at a certain day, either to confess or deny his seal, and if he can not deny his seal, they shall proceed to judgment according to the exception as it ought to be allowed or disallowed."

It will be observed that this statute simply provides that the exceptions shall be alleged by one impleaded before

any of the justices, thereby, by implication, requiring that it be pending the proceedings or trial. At least, such has been the ruling of the courts touching the subject matter.

Thus, in Sheppard *v.* Wilson, 6 Howard 259, this court had under consideration this question in connection with the statute of the Territory of Iowa. That statute reads as follows:

"If during the progress of any trial in any civil cause either party shall allege an exception to the opinion of the court and reduce the same to writing," etc.

Mr. Justice Grier, on page 274, speaking for the court, says:

"It (the Iowa statute) is much more stringent in its requirements as to the time and mode in which a bill of exceptions shall be obtained and placed on record than the statute of Westminster II, which first gave the bill of exceptions. Yet, under that statute, the courts have always held that the exception should be taken and reduced to writing at the trial, not that they need be drawn up in form, but the substance must be reduced to writing whilst the thing is transacted."

He goes on further to say that it is sufficient if the exception be taken at the trial.

In Phelps *v.* Mayer, 15 Howard 159, the verdict was rendered on the 13th of December and the exception was not taken until the 14th. Chief Justice Taney speaks of the necessity of the exceptions being taken at the trial, also of the necessity of their being taken while the jury is at the bar, and refers approvingly to Sheppard's case, *supra*, as furnishing the true rule. The reason given by Chief Justice Taney for the rule is that justice requires that the judge shall have an opportunity to reconsider his instructions. It is clear, we think, that Phelps *v.* Mayer decides the same as was decided in Sheppard *v.* Wilson and no more, namely, that the exception must be taken at the trial.

We have found no better statement of the rule than that

of Judge Perkins in Jones *v.* Van Patten, 3d Indiana, on page 111. He says:

"It is a well established general rule that erroneous steps in the progress of a cause are waived, unless excepted to before additional steps are taken. If incompetent testimony is permitted to go to the jury without objection, no matter how great may have been its effect in producing the result in the cause, this court could not, at least in a civil action, reverse the judgment for that reason. The principal is this: If a party object in time, the error may be corrected without expense or trouble; and it is not right that he should lie by, take his chance of success over the error, and failing of it, then, at much expense of time and money on the part of others, overturn all subsequent proceedings, for the correction of said error. The rule, therefore, as to excepting to inadmissible evidence, is, that it must be done before the jury leaves the box for deliberation, as till then, no injury has been occasioned, and the court can instruct the jury to disregard the evidence. As to the instructions of the court, they must be excepted to before the jury *deliver their verdict*, as, till then, if exception be made, the court can correct, or the adverse party can waive, an instruction, and the jury may be correctly advised as to the law, and returned to review their deliberations. To this point the authorities are numerous." 7 Wend. 31; 3 Barr 44; 12 S. and M. 679; 6 Howard's U. S. 260; 8 Mis. 656; 3 Pike 451; 26 Me. 444; 2 Gilman 285.

In Train *v.* Collins, 2 Pickering 144, the trial judge seems to have erroneously answered a question put to him by one of the jurors just as the jury were retiring. No objection was made to this answer until after the verdict was rendered. It was then held to be too late, the court saying:

"It would have been proper to have called the attention of the judge to this subject immediately, and probably a single word of objection from the counsel would have set the matter aright, for the jury would have been called in and informed that an erroneous answer had been given to the question, or that it was a subject which they ought not to consider as having any bearing on the case."

And further along in the same opinion it is said:

"Even when the jury returned their verdict, stating the ground upon which it was given, had there been any previous intimation

that stress was laid upon this incident, the jury might, and probably would, have been sent out again with the mistake corrected."

See also Inhabitants *v.* Inhabitants, 3 Pickering 172.

In Pennsylvania, the decisions are numerous, that exceptions to the charge may be taken at any time before the jury have delivered their verdict in open court, and that even after they have agreed upon it and sealed it up.

In Jones and Clark *v.* The Insurance Co. of North America, 1 Binney 38, it is said:

"A jury may depart from a privy verdict. Until it has been opened and confirmed in court it is in fact no verdict; and the authorities and precedents which have been read show undeniably that if the exception to the charge is taken at any time before verdict it is in season. We can not refuse to allow the bill in this case, and we are happy to do it, as it will bring the principal question before a higher tribunal."

To the same effect is Morris *v.* Brickley, 8 Serg. & Rawle 211. On page 216 Chief Justice Tillman says:

"Bills of exception are founded on the statute of Westminster II, 13 Edward I c. 31. That statute does not expressly mention at what time the exception is to be tendered, but the reason of the thing, the practice of most courts and the precedents and authorities on the subject, prove, that it must be at the time of the trial. Exceptions to evidence must be taken as soon as the court has decided to admit or reject the evidence. It is sufficient, however, if a note be made of the exception and submitted to the court at the time it is taken. It may afterwards be reduced to form. When an exception is taken to the charge of the court it must be tendered before a verdict is delivered by the jury in open court."

In Bratton *v.* Mitchell, 3 Pa. St. 44, the rule in Pennsylvania is again stated as follows:

"It was the duty of the counsel to have requested a bill of exceptions to the charge before the jury *delivered their verdict* in open court. Jones *v.* Ins. Co., 4 Dallas 249; same case, 1 Binney, 31; 8 Serg. & Rawle 211; I. Pa. St. 303. This court has ruled that unless an exception is taken at the trial or *before the verdict is rendered*, the judge's charge filed pursuant to a request made subsequent, is not a subject for an assignment of error."

In Lanuse *v.* Barker, 10 Johnson 311, on page 321, the same question was presented and decided as follows:

"A bill of exceptions was tendered to the judge. The jury found a verdict for the plaintiff for 15,904 dollars and 33 cents.

"A motion was made by the defendant's counsel to argue the cause on a bill of exceptions, and also a motion for a new trial on a case made. When the argument was about to be opened on the part of the defendant, Pendleton, for the plaintiff, objected that the bill of exceptions had not been regularly taken; that the exceptions were not made until the jury had returned into court with their verdict, though *before it was actually delivered.* The exceptions, however, were not actually reduced to writing during the sittings. The new act, requiring bills of exception to be argued before a writ of error was brought had made no alteration in the practice.

"PER CURIAM.—The bill of exceptions was tendered in season, as to any exception to the charge of the judge, but it was not tendered in season as to any question of evidence arising upon the trial; for the party, if the exception had been made at the time, might have waived or supplied the evidence. (Wright *v.* Sharp, 1 Salk. 288; Jones *v.* Ins. Co. of N. Am., 4 Dallas 249.)"

In Camp *v.* Tompkins, 9 Conn. 545, it was held that, as the common law rule expressly fixes no time at which the exception is to be taken and the exception having been allowed after the verdict, the court would not undertake to say that it was not properly allowed.

So, in Agnew *v.* Campbell's Administrators, 17 New Jersey Law Reports, on page 293, Chief Justice Hornblower recognizes the rule to be that the exception must be taken at the trial.

In Illinois, as elsewhere, it is held that it is necessary that exceptions to instructions shall be taken at the trial, some of the cases stating it in this language, others stating that the exceptions must be taken at the time the instructions are given.

In Hill *v.* Ward, 2 Gilman, 7 Ills., on page 293, the reason for the rule is given in these words:

"The doctrine that a party can not except to the opinion of the

court in giving and refusing instructions except at the time they are given or refused, is distinctly settled by this court in Leigh *v.* Hodges, 3 Scam. 15, and it needs no argument or authority to prove that a party can not be permitted to assign for error in this court any decision or opinion of the circuit court made or expressed during the progress of a cause, in the propriety of which, at the time of its occurrence, he silently acquiesced."

Here, again, it will be seen that the rule does not apply to the case at bar, because the bill of exceptions shows that the defendants did not acquiesce in these instructions, but objected thereto, and stated that they desired time to particularize their objections and exceptions.

In the Leigh case it is stated that no exception was taken on the trial, and then follows this:

"It is a well settled rule that exceptions to the charge of the judge should be taken at the time the charge is given, before the jury retires, as thereby an opportunity is afforded the judge for more reflection to correct any error into which he may be precipitated in the hurry of trials on the circuit. It is too late to take the exception *after the verdict is rendered.*"

Without citing further cases, such, we think, will be found to be the general current of authority. That the trial continues at least until the verdict is rendered, is too clear for argument.

We have, then, this exception well taken and reserved: First, because it is within the principle and reason of the rule which requires that the court shall have an opportunity to correct the instruction; second, it is within the letter of the rule and the adjudicated cases; and, third, in this case, to hold that the exception is not well reserved would be rank injustice, because it is shown, and not disputed, that the defendants relied on the agreement. As the court had twelve hours before the jury agreed, and thirty-six hours before they returned their verdict, after the exception was called to his attention, the allowance of the exception can work no wrong to the court, the government or any one else.

4. Finally upon this question, we submit that the error in this instruction is not like an ordinary error in the trial of a cause which goes to a proposition of law applicable to a particular phase of the case. It is a radical, fundamental misstatement of the law applicable to every item of the evidence, and to every phase of the case. It is a heresy which attaches itself to every paragraph and sentence of the charge. With this paragraph attached, every paragraph of the instructions was erroneous, and an exception to the whole ought to be sustained.

XV.

The court gave as a part of his instructions to the jury, and subject to our exceptions, the following:

"The funds entrusted to banks represent the scanty savings of the poor men and women of the country as well as the larger accumulations of the rich; and their preservation from loss by careless and improvident loans constitutes a trust of the most sacred character. No officer of a bank has any right to hazard the loss of such trust funds by making loans of them to parties of doubtful solvency, or upon doubtful securities. The acceptance by any officer (of a bank) of a bill of exchange or draft is an unlawful act, unless it is drawn in good faith against actually existing values. No officer of a bank has any right to accept any bill, draft or other paper, and give credit therefor on the books of the bank as a cash credit, unless such officer at the time of its acceptance, honestly believes such bill, draft or paper to be the actual equivalent of a like amount of money. The security of business and the preservation of the people from loss and injury demand that there should be a vigorous enforcement of these salutary principles of good faith and honest dealing on the part of officers of the bank."

So far as the first sentence of this instruction is concerned, it contains no proposition of law, unless it be that the relations between a bank and its depositors is that of trustee and *cestui que trust*. That such is not the law, but

that the relation is merely that of debtor and creditor, is well settled.

National Bank *v.* Insurance Company, 104 U. S., 54.
Thompson *v.* Riggs, 5 Wall., 663.
Phœnix Bank *v.* Risley, 111 U. S., 125.
McLain *v.* Wallace, 103 Indiana, 562.

The statement that the funds entrusted to banks represent the *scanty savings of the poor men and women* of the country as well as the larger accumulations of the rich, carries upon its face the declaration of its purpose

The declaration "no officer of a bank has any right to hazard the loss of such trust funds by making loans of them to parties of doubtful solvency or upon doubtful securities," is, we submit, misleading, and defines neither good law nor good banking, but it is made still worse by the next sentence: "the acceptance by any officer of a bill of exchange or draft is an unlawful act unless it is drawn in good faith against actually existing values." By that is meant that no officer of a bank has a right to give credit for a bill of exchange or draft unless he knows such bill of exchange or draft to be drawn against actually existing values. As already shown in this brief, that excludes entirely accommodation paper, paper drawn with the expectation of providing funds to meet the same, paper secured by collateral; in short, it would exclude half the paper habitually and necessarily received and credited by banks.

The next sentence is: "No officer of a bank has any right to accept any bill, draft or other paper and give credit therefor on the books of the bank as a cash credit, unless such officer at the time of its acceptance honestly believes such bill, draft or paper to be the actual equivalent of a like amount of money." We respectfully submit that no banking is or can be conducted on any such basis. Every bank necessarily at times has customers who owe

it money in larger or smaller sums, who, from a variety of circumstances, must be assisted and nursed, and thus enabled to pay what they owe. To determine the exact point at which assistance to such feeble and struggling customers must cease is a very difficult question, the proper solution of which is the highest test of the safe banker. But to say that in no such case must assistance be rendered, that in no case must a loan be made to a party of doubtful solvency, or credit given upon paper which is not believed to be the actual equivalent of a like amount of money, is to reverse all rules and principles of banking, and to render the definition of the word "embarrassment" the same as the word "ruin."

A customer owes a bank a thousand dollars and is unable to pay the same. If he can get five hundred more he believes, and the banker believes, and has good reason to believe, his business can go on and he can repay, not only the five hundred, but the thousand dollars, with interest. It may be that he offers, if the additional five hundred is loaned, to give collateral or mortgage security, which, while not believed by the banker to be the actual equivalent of the whole debt, is yet much better than no security, better than to leave the thousand wholly unsecured, without making the additional loan of five hundred. According to this instruction, such a transaction by a banker would be unlawful. We submit that the "vigorous enforcement of these principles" would have anything but a "salutary" effect upon business; and we further submit that the introduction of his charge to this jury by such misstatements of the law could only tend, and did only tend, to mislead the jury as to their duty in the premises.

It must be borne in mind that one of the contentions of the defendants was that they did not act with any common intent with Mr. Haughey for the defrauding of the bank, but that their sole purpose was to conserve and enlarge their business, and the sole purpose of Mr. Haughey by

making the advances which were made was to keep the bank upon its feet and enable it ultimately to collect what was due from the Cabinet Company. Under these circumstances the foregoing instruction was necessarily grievously hurtful and misleading.

XVI.

At the very commencement of his instructions, the judge of the trial court thought it necessary to dilate upon the enormity of the offenses with which the defendants were charged. In order more effectually to do this, the learned judge assumes to expound to the jury the motives which influenced Congress in the enactment of the section of the statute involved. He stated to the jury that usually Congress left the fixing of the punishment for crimes against the United States to the discretion of the court, but so great was its horror of the offenses denounced by this section, and so little confidence did Congress have in the capacity of the judges and the fidelity of jurors in the federal courts, when dealing with such enormous offenses as those under consideration, that it had for itself as to these offenses, fixed the minimum punishment. With an eloquence more characteristic of the advocate than of the judge, he tells the jury that "the statute itself is a protest against allowing our judgments to be controlled by sympathy for fallen pride and shipwrecked lives." With all due respect, we submit that this kind of eloquence is quite out of place in a judical exposition of the law, and we further submit that the learned judge is not correct in saying that Congress usually leaves the fixing of punishment without limitations to the courts. On the contrary, as to crimes of any importance, the usual course is to prescribe maximum and minimum punishments, and the attempt of the judge to impress upon the jury that, on account of the enormity of the crime with which defend-

ants were charged, it was made by Congress an exception to legislative rules, was misleading, was calculated to and did excite an unjust prejudice against the defendants, and ought of itself, independently of every other exception in the case, to result in its reversal.

Moreover, it is not seen how such suggestions as these can be proper for the consideration of the jury in the Federal Court. The duty of that jury is simple and single. They have to answer simply guilty or not guilty. With the character and measure of punishment, they have nothing to do, and their minds ought to be left perfectly free, without any stimulus from feeling or passion, to decide the one question before them. Of what use is it when a jury is placed in the box, to examine man by man to discover whether their minds are open, free from prejudice or any feeling that would result in a partial verdict, if, during the trial and at its close, the court is at liberty to "prick the sides of their intent" with such a spur as this?

The spirit which prompted such instructions pervaded the whole trial, and found a fitting expression in the judgment which gave to Francis A. Coffin as an aider and abettor, as a sentence, the utmost limit of the law, namely, ten years in the penitentiary. If he, as aider and abettor, the customer and borrower from the bank, who stood outside and dealt with the bank at arm's length, having no relations of trust in the premises, was deserving of ten years, the limit of the law, what ought to have been the sentence of the president and sole manager of the bank, the man who stood for board of directors, president and cashier, who was charged with the administration of the great trust of which the judge speaks, and who so administered that trust as that, independently of the losses by the Indianapolis Cabinet Company, assets of the bank to the amount of nearly a half million of dollars were sunk in enterprises in which the president and his family were the

principal owners? Surely, no one would expect, after such a sentence to the aider and abettor, the mere accessory, that the principal offender would be let off with less than the limit of the law, much less that six years would be thought ample punishment in his case. If this sentence can stand, we think that no one will hereafter question that, as matter of fact, as well as of fancy, justice is blind.

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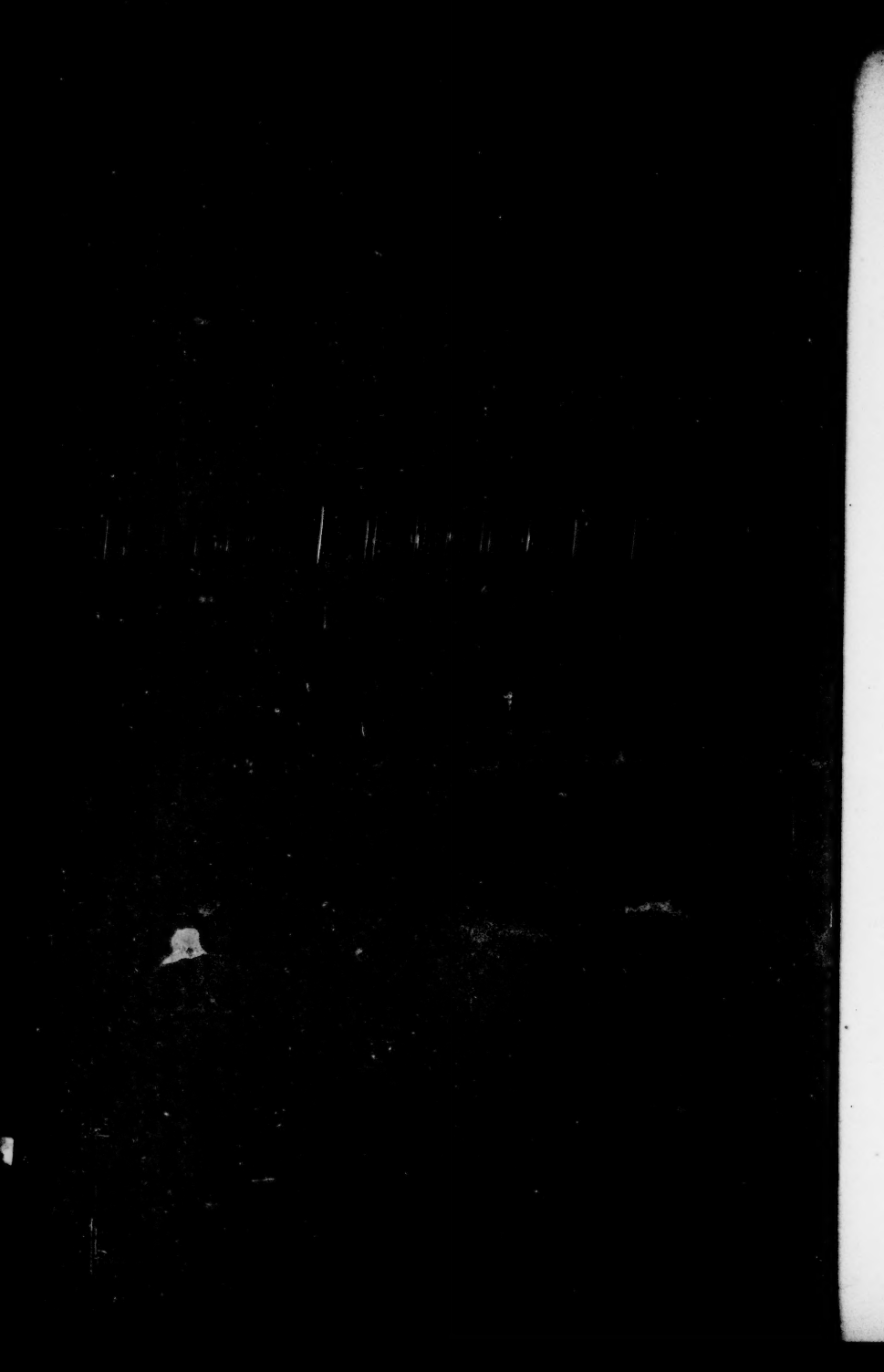

In the Supreme Court of the United States.

OCTOBER TERM, 1894.

FRANCIS A. COFFIN AND PERCIVAL B. Coffin, plaintiffs in error,
v.
THE UNITED STATES.
} No. 741.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF INDIANA.

BRIEF FOR THE UNITED STATES.

This case is here on writ of error to a judgment entered on the 4th of June, 1894, upon an indictment finding Francis A. Coffin and Percival B. Coffin guilty as charged in all the counts in the indictment (p. 87).

The indictment consisted originally of 50 counts; a *nolle prosequi* was entered as to 47, 48, 49, and 50.

On motion in arrest of judgment, the court sustained the motion as to all the counts from the seventeenth to the thirty-sixth inclusive (p. 90).

So the questions presented for the consideration of this court on review are those arising upon the counts 1 to 16 inclusive and 37 to 46 inclusive.

The bill of exceptions will be found (pp. 91–174); and the assignment of errors (pp. 149 to 173).

There was no demurrer to the indictment or to either of the counts thereof; but the objections thereto were raised and presented for consideration on the motion in arrest of judgment (p. 90).

The prosecution was under section 5209 of the Revised Statutes, and was against these defendants as aiders and abettors of Theodore P. Haughey, who, as president of the Indianapolis National Bank, was charged with the willful misapplication of the funds of the bank, by paying certain checks and bills of exchange drawn by the Indianapolis Cabinet Company, with intent to injure and defraud the bank, and by making certain false entries in the books of the bank with like intent.

The voluminous and earnest brief, filed on behalf of plaintiffs in error, does not discuss all of the questions presented in the assignment of errors. We will endeavor to notice and reply to all of those which counsel have considered in their brief, observing, as nearby as possible, the order pursued there.

(Since writing the foregoing the "Statement of Facts," etc., of plaintiffs in error, filed November 26, 1894, has been received.)

ASSIGNMENT OF ERRORS.

I. Because the trial court erred in overruling the defendants' motion for an arrest of judgment upon said indictment, in so far as the same was overruled.

V. The trial court erred in permitting the Government to give testimony against the defendants under either of the counts of said indictment.

No grounds are suggested in support of the motion in arrest of judgment, except the general ground (p. 90) "that neither count of said indictment states facts sufficient to constitute a crime under the statutes of the United States." Under the fifth assignment, however, seven grounds are indicated why the court should not have admitted evidence in support of the counts; and we will assume that these are the grounds relied on in support of the objection to the indictment for insufficiency.

Of course the indictment can not be maintained unless the defendants be apprised with clearness and all necessary certainty of the crime of which they stand charged, and unless every ingredient of which the offense is composed be accurately and clearly alleged. It is not sufficient to employ the language of the statute merely, but the manner and means and intent must be fully and clearly charged. The view taken in the brief of plaintiff in error appears to be, that although the charge may have been properly made as to the principal, it must be repeated in the count as to those charged with aiding and abetting.

(*a*) That the counts do not aver that defendants, at the time of the alleged criminal acts, *knew* that Haughey was president of the bank (p. 149, Instruction 6, p. 152).

The statute, section 5209 Revised Statutes, provides—

> Every president * * * who wilfully misapplies any of the moneys * * * of the association, or who, without authority from the directors, * * * makes any false entry in any book, or report, or statement of the association, with intent in either case to injure or defraud the association * * * or to deceive any agent appointed to examine the

affairs of any such association; *and every person who, with like intent, aids or abets any officer, clerk, or agent in any violation of this section shall be deemed guilty of a misdemeanor and shall be imprisoned not less than five years or more than ten.*

It will be observed that this statute contains no requirement that the defendants should *know* that the person who they were aiding or abetting was an officer of the bank.

As to the element of knowledge in the averment and proof of crime under a statute, it is true, generally, as has been stated with reference to liquor selling:

> Where the statute is silent as to the defendant's intent or knowledge, the indictment need not allege, or the Government's evidence show that he knew the fact. His being misled concerning it is matter for him to set up in defense and prove. Quite different are the law and procedure where the statute has the word "knowingly," or the like; knowledge is then an element in the crime. The indictment must allege it and the evidence against the defendant affirmatively establish its existence. (Bish. on Stat. Crimes, 2d ed., sec. 1022; *Ib.* secs. 675, 729, 889.)
>
> Where guilty knowledge is not a necessary ingredient of the offense, or where the statement of the act itself necessarily includes a knowledge of the illegality of the act, no averment of knowledge is necessary. It is otherwise where guilty knowledge is not so implied and is a substantive ingredient of the offense. (Whar. Crim. Prac. and Plead., 9th ed., sec. 164.)
>
> Under a statute, where the guilty knowledge is part of the statutory definition of the offense, it must be averred. (*Ib.*)

In the cases of issuing forged paper, or of resisting an officer, knowledge on the part of the accused that the paper so issued by him was forged paper, or that the person resisted was an officer, is of the very essence of the offense, and must be averred and proven.

As said by Chief Justice Fuller in *Pettibone* v. *United States* (148 U. S., 205): "In cases of that sort it is the official character that creates the offense, and the *scienter* is necessary."

And in *United States* v. *Northway* (120 U. S., 333) where the question was—

> Whether it is necessary in charging the defendant with aiding and abetting Fuller, the cashier of the bank, with misapplication of its funds, to charge that the defendant then and there knew that said Fuller was such cashier. We answer this question in the negative. The counts in question charge Fuller with having made the misapplication of the funds of the bank as cashier. They further charge that the defendant, being president and agent of the association, willfully, etc., and with intent to injure and defraud said bank, did aid, abet, counsel, and procure the said Fuller, he, the said Fuller, then and there being cashier as aforesaid, to willfully misapply. We do not think it is necessary in an indictment for this offense to charge any *scienter* more distinctly. The acts charged against Fuller could only be committed by him by virtue of his official relation to the bank. The acts charged against the defendant could only be committed by him in his official capacity. Both are alleged to be officers of the same corporation. The knowledge that each had of the official relation of the other is necessarily implied in the coexistence of thie official relation on the part of both toward the same corporation.

Let the counts of this indictment be tried by the rule here announced. Take the fifth count. It charges that the said Haughey then and there being the president of a certain bank did then and there, by virtue of his said office as president of the bank, willfully misapply the moneys of the bank without authority of the directors thereof, with intent to convert the same to the use of the Indianapolis Cabinet Company by then and there paying out of the moneys of the bank certain checks drawn upon said bank by the Indianapolis Cabinet Company. And no part thereof was said company entitled to draw from said bank, because said company had no funds in said bank to its credit. That said company was then and there insolvent, as said Haughey then and there well knew. That as such president aforesaid the said Haughey was intrusted and charged by the directors of the bank with the custody and control of its moneys and the general superintendence of its affairs.

That the defendants did unlawfully and *knowingly* and with intent to injure and defraud the bank aid and abet the said Haughey to willfully misapply the moneys of the bank.

The defendants here are charged with aiding and abetting the president; and the proper formula for so charging them will be found in *Bishop's Directions and Forms*, secs. 114–116, and where the proper course is said to be to set out, first, the offense as committed by the principal, and then to charge that the defendant was then and there, at the commission of said felony, present, aiding, abetting, and inciting the principal therein. It is not necessary to

repeat as to the aider and abettor the specifications of the charge previously set forth in the count as to the principal. (*United States* v. *Mills*, 7 Pet., 138; *United States* v. *Simmons*, 96 U. S., 363.)

Now here the offense is fully charged against Haughey as president; that he paid, or caused to be paid, checks drawn by an insolvent company, known by him to be insolvent; that he had the custody of the moneys of the bank and the general superintendence of its affairs; that the defendants did *knowingly* aid and abet Haughey, *as aforesaid*, with intent to injure and defraud the bank.

We submit, in the first place, that the very statement of the offense necessarily imports a knowledge on the part of the defendants of the official character of Haughey; that it was impossible for them to have received from him, or been a party in any way to the payment by him, of these checks without being admonished of his official character; and, secondly, that it is altogether immaterial what the precise title of his office was, whether president, cashier, or assistant cashier, if he was at the time "any officer, clerk, or agent" of the bank.

But the counts do specifically charge that what the defendants did they did "knowingly."

Dr. Wharton says, in his Criminal Pleading and Practice, section 262:

> "Knowingly" is one of the expletives which, when fraud is charged, it may be useful to insert. For, although it may be discharged as surplusage if unnecessary, it may be sometimes employed to help out an otherwise defective allegation of guilty knowledge.

In *Cliquot's Champagne* (3 Wall., 115) the statute provided that if the owner or agent of any goods shall *knowingly* make an entry thereof by any fraudulent means the goods shall be forfeited. The court charged the jury (p. 127) that "knowingly" there meant that in swearing before the consul as to the value of the goods, the owner knew better and that he was swearing falsely. And this court (p. 144) said that the term "knowingly" referred to the guilty knowledge of the owner by whom the entry was made. That the act of the agent was to be regarded as the act of the guilty principal, and the same consequences followed as if the entry had been made by the owner in person.

But further, these counts charge that the defendants did aid Haughey, "as aforesaid." And from the twenty-third count on "as president aforesaid," and "as such president aforesaid," to willfully misapply the moneys of the bank.

The term "as aforesaid" relates to all that had gone before as to the same subject-matter. Even as between separate counts, the relative "said" or "aforesaid" is taken to refer to the next preceding count.

In 1 Bish. on Crim. Proc., sec. 512, it is said:

> At this day, and perhaps always, the various words of reference—and "there" and "said" are specimens—will be referred to any antecedent plainly required by the sense, whether the writer in expressing it framed his sentences according to the rules of grammar or not. * * * The court will lean to the interpretation which supports the indictment.

Haughey had been already charged in the courts with being president of the bank, and, as such president, doing

the acts specifically set out. The defendants are charged with knowingly aiding and abetting him "as aforesaid." These words would be wholly without meaning or application unless they referred to what had been "aforesaid" in the count as to Haughey and the acts done by him in which they aided and abetted.

But, say counsel in their brief (p. 6)—

> It is to be borne in mind that the offense with which the plaintiffs in error are charged is an independent statutory crime. * * * This offense is not accessorial.

And the language of Mr. Justice Story, in *United States* v. *Gooding* (12 Wheat., 485), is quoted in support of this view.

Misdemeanors do not admit of accessories, either before or after the fact. But the general rule is that whatsoever will make a party an accessory before the fact in felony will make him a principal in a misdemeanor, if he is properly charged as such in the indictment. (*United States* v. *Hartwell*, 3 Cliff., 227; *United States* v. *Harries*, 2 Bond, 311; *United States* v. *White*, 5 Cranch, Cir. Ct., 73.)

In *United States* v. *Gooding*, *supra.*, relied on for plaintiff in error, Mr. Justice Story, taking up in turn the instructions that were before the court, says, on page 475:

> The fifth instruction turns upon a doctrine applicable to principal and accessory in cases of felony, either at common law or by statute. The present is a case of a misdemeanor, and the doctrine can not, therefore, be applied to it; for, in cases of misdemeanors, all those who are concerned in aiding and abetting, as well

> as in perpetrating the act, are principals. * * * Nor is the trial or conviction of an actor indispensable to furnish a right to try the person who aids or abets the act; each, in the eye of the law, is deemed guilty as a principal. In the present indictment the offense is in the third and fourth counts laid, by aiding and abetting in the very terms of the act of Congress. * * * We do not consider that the terms "aid" and "abet," used in this statute, are used as technical phrases belonging to the common law, because the offense is not made a felony; therefore the words require no such interpretation. The statute punishes them as substantive offenses, and not as accessorial, etc.

The fifth instruction referred to was to the effect that the defendant there could not be convicted of aiding and abetting in an offense with which the principal was not charged with committing.

Of course the offense of aiding and abetting is a distinct offense in this sense only, that it is committed by the aiders and abettors, while the principal is guilty of the commission of the offense charged against him. But it must be observed that under section 5209 Revised Statutes, no difference whatever is made between "principal" and "aider and abettor" as to either the dignity or the punishment of the offense. And, so far as those characteristics go, the offense is the same as to both parties.

The court having once set out, with sufficient fullness and clearness as to manner and means, the offense charged against the principal, need do no more as to the other defendants than to charge that they did unlawfully, willfully, knowingly, and feloniously, and with intent to injure

and defraud the bank, aid and abet the said Haughey, as aforesaid, to willfully misapply the moneys, etc., of said association.

Even as to a felony "in the indictment of an accessory before the fact, it does not seem necessary to state the manner of committing the offense; it is sufficient to charge generally that he 'feloniously abetted, incited, and procured.'" (3 Greenlf., 15 ed., sec. 49.)

(*b*) That neither of the counts allege that defendants, at the time of their action complained of, had any knowledge of the wrongful acts of Haughey.

Much that has just been said will apply here.

> The word "knowingly" or "well knowing" will supply the place of a positive averment that the defendant knew the fact subsequently stated. (1 Bish. Crim. Proc., sec. 504.)

The statute does not otherwise make knowledge an element in the offense. (*United States* v. *Smith*, 2 Mason, 143; *United States* v. *Malone*, 20 Blatch., 141.)

(*c*) Neither of the counts allege an actual conversion of the moneys, etc., to the use of the Indianapolis Cabinet Company, but only an intent to convert.

They all state the actual conversion. Take the first count. It alleges that the—

> Indianapolis Cabinet Company thereupon drew its check for said sum upon the said bank, which check was then and there paid by said bank under the direction of the said Theodore P. Haughey. * * * That said sum was so willfully misapplied to the use and benefit of the said Indianapolis Cabinet Company as aforesaid.

Take the seventeenth count:

> * * * did then and there, by virtue of his said office as president of said bank, and without the authority of the board of directors, unlawfully, feloniously, and willfully misapply the moneys, etc., of said bank, with intent to convert the same to the use of the said Indianapolis Cabinet Company; a more particular description of the said moneys, funds, and credits being to the grand jurors unknown, in a large amount, to wit, the sum of $375,000, by then and there ca-hing, discounting, and paying for the use and benefit of the said Indianapolis Cabinet Company out of the funds of said association, a large number of worthless and insolvent notes, drafts, and bills of exchange, etc.

Take the thirty-eight count, which charges a false entry of $20,480.76. And so with the counts following:

(*d*) Because neither count alleges that defendants were officers, agents, directors, employés, or in any way connected with said bank, as in fact they were not.

It was because they were not that the counts did not charge that they were. Aiding and abetting the president of a national bank to defraud the bank may be committed by persons having no official connection with the bank. Any stranger to the bank may be an accessory or an accomplice in the crime, and aid and abet the president in the commission of it.

> To aid or abet the commission of a crime is to assist or encourage the actual perpetrator. There must be some participation in the act. (*Clarke's Crim. Law*, 86, and cases cited.)

An officer or an employé of a bank may be held liable as an aider and abettor for merely failing to interfere to prevent the commission of the crime.

> If it is a person's legal, as distinguished from his moral, duty to interfere, as in a case of a bank watchman, and by doing so he can prevent a felony about to be committed, his failure to interfere aids the commission of the crime and he is guilty. The assistance need not be physical, but may consist in mere encouragement. (*Mitchell* v. *Commonwealth*, 14 S. W. Rep., 489.)

In the brief for plaintiff in error (p. 26) it is said: "It is not to be supposed that this section (5209) was enacted for the purpose of preventing the wrecking of banks by strangers and outsiders.

Does counsel mean that that privilege is to be enjoyed "by strangers and outsiders" alone? That in all the checks and guards which in the national banking act are designed to secure efficiency in the conduct of banks, safety to depositors and dealers, and security to the financial and industrial interests of the country so largely dependent upon these banks, it was deemed not worth the while to take account of "strangers and outsiders," but that section 5209, when it said:

> Every president, director, cashier, teller, clerk, or agent of any association who embezzles, abstracts, or willfully misapplies, etc., * * * and every *person* who, with like intent, aids or abets any officer, clerk, or agent in any violation of this section, etc.

meant by the word "persons" who aided and abetted, only the same class of persons who are previously referred to as president, director, cashier, teller, etc.?

If section 5209 does not embrace "strangers and outsiders," then has the national-banking act failed altogether to provide any punishment for the offenses committed by this large and dangerous class, to whose wiles and machinations and temptations the officers of the bank are daily exposed.

Does counsel really mean that if an outsider or stranger goes to the president of a national bank and openly arranges with the president to rob the bank through means of wrongfully certified checks payable and delivered to the stranger, or the wrongful discounting of the stranger's notes—known to be worthless—done with intent to injure and defraud the bank, that such stranger is not to be punished under this section as an aider and abettor?

Counsel have overlooked, it would seem, in their consideration of this question, one element which is essential and vital; that is, the intent with which the acts or omissions are done. He is correct in stating that it would be absurd to hold that a stranger who borrows from the officers of a bank money in excess of the amount they are authorized to loan him aids and abets the officers in a misapplication of the funds of the bank. Or that a president or cashier of a bank who makes and issues drafts and bills for the benefit of outsiders, that such outsider is guilty of aiding and abetting. It is essential in all these cases that the acts of the parties shall be with guilty knowledge and evil intent to injure and defraud the bank. And this he will find was the very point decided in Britton's Case, in 108 U. S., 193, so confidently relied on by him.

Suppose it be true, as alleged, that "Mr. Haughey was practically board of directors, president, and cashier; that

the board of directors permitted him to manage the entire business of the bank; and thus his action in making a loan or discount was the action of the bank." However far this might avail in a civil proceeding by or against the bank, can it serve the defendants here to show that in such a violation of the objects and requirements of the national-banking act a valid ground of defense to a criminal prosecution can be found?

Will it be assumed, without proof, that the defendants knew of this extraordinary method of conducting the business of a national bank?

There is nothing in this record to show that they knew it—and if it could constitute a valid defense for them, the burden was surely upon them to prove that they knew of it and acted upon it.

(*e*) Because the count did not aver the value of a pound sterling, and the court could not take judicial notice thereof; and the said count further failed to aver that the Indianapolis Cabinet Company was insolvent.

This refers to the first count (p. 3), which charges that—

> The Indianapolis Cabinet Company presented to said bank, and to the said Theodore P. Haughey, as such president thereof, a certain bill of exchange, drawn by said Indianapolis Cabinet Company on the Indianapolis Desk Company, of London, England, for £1,194, and due on June 1, 1893, which said bill of exchange was received by said Theodore P. Haughey and placed to the credit of the said Indianapolis Cabinet Company upon the books of said bank; and the said Indianapolis Company thereupon drew its check *for said sum* upon the said bank, which check was then and there paid by said bank, under

the direction of said Theodore P. Haughey. That said Indianapolis Desk Company, of London, England, did not owe said Indianapolis Cabinet Company any sum whatever. *That said Theodore P. Haughey failed and refused to send said bill of exchange forward for collection, whereby* said sum was lost to said association. That said sum was so willfully misapplied to the use and benefit of the Indianapolis Cabinet Company as aforesaid.

This count previously charged the said Haughey, as president of said bank, with willfully misapplying the funds of the bank, with intent to injure and defraud the bank in a large sum, to wit, the sum of $5,802.84.

Whether the amount in dollars and cents equaled the amount in pounds sterling was matter of evidence. The charge in the indictment that the check drawn by the Indianapolis Cabinet Company upon the said bank was "for said sum," was a matter for the jury upon the evidence.

If the count was for the larceny of so much money, the kind of money should be specifically designated. An account for stealing so many pounds sterling could not be sustained by proof of the stealing of so many dollars and cents. But the gravamen of the charge here is the willful misapplication of the moneys, funds, and credits of the bank. And if the bank received from the defendant a bill of exchange for £1,000 and gave him credit for $5,000, and honored his check for that amount, with intent to injure and defraud the bank, it is certainly no ground of defense that £1,000 was worth more or less than $5,000. The specification of the several amounts in the count was to make a certain and accurate statement of the actual

facts as they occurred. And the case would be the same if the bank had received from the defendant his unsecured note for $1,000 and had given him credit and honored his check for $500, with intent to injure and defraud the bank for the use and benefit of the defendant.

But looking at the count itself it charges the president with "intent to injure and defraud said association in *a large sum*, to wit, the sum of $5,802.84." It then charges that the company drew its bill of exchange on London "for the sum of £1,194." It then charges that the company drew its check for *said sum* upon the said bank, which check was then and there paid. Now, what does "said sum" refer to? To the sum of $5,802.84, or the sum of £1,194? Perhaps, by technical rules of grammar, to the next antecedent, which would be the pounds sterling. But what did the defendants understand by it; were they misled? Is it not plain that under the known course of banking in this country pounds sterling, as such, could not have gone to the credit of the drawer, but only United States currency? And is it not sticking in the bark to claim for the indictment a construction at war with common knowledge and experience?

Again, it is argued in brief for plaintiffs in error (p. 21) that the loss to the bank is charged to have resulted from the insolvency of the Cabinet Company, or from the fact that the Desk Company owed the Cabinet Company nothing. Whereas the statement in the count is that Haughey, the president, "failed and refused to send said bill of exchange forward for collection, *whereby* said sum was lost to said association."

> It is a general rule that the special matter of the whole offense should be set forth in the indictment with such certainty that the offense may judicially appear to the court." (*Whart. Crim. Proc. and Plead., sec.* 151; *Bish. on Crim. Proc., sec.* 554.)

(*f*) That the intent charged against the defendants was not a like intent with that charged against Haughey, in that the intent charged against Haughey was that the property should be converted to the use of the Indianapolis Cabinet Company, and that his intent was also to injure and defraud the association, whereas only the latter intent was charged against the defendants.

The first part of each count charges specifically the manner and means by which Haughey as president misapplied the funds of the bank. The latter part of each count charges the defendants with aiding and abetting the said Haughey "*as aforesaid* to wrongfully, unlawfully, feloniously, and willfully misapply the moneys, funds, and credits of said association, to wit:"

In 1st Bishop, Criminal Procedure, section 512, it is said:

> The various words of reference, of which the relative "there" and "said" are specimens, will be referred to any antecedent plainly required by the sense, whether the writer in expressing it framed his sentences according to the rules of grammar or not.

The word "aforesaid" plainly and unambiguously refers to all that has gone before, relating to the same subject-matter.

The general intent of the defendants was as alleged, "to injure and defraud said association." The manner

and means of doing so were "as aforesaid." They had all been specifically charged in the foregoing part of each count, and the repetition of them in the same count was avoided by the employment of this relative term "aforesaid."

(*g* and VI) That the court erred, not only in overruling the last objection (*f*), but in the statement made in the presence of the jury, overruling the same, etc." The last objection being that "the transactions complained of were in the nature of loans."

The pretense that these appropriations of the bank funds by the defendants were "loans" is at variance with the entire language and tenor of every count of the indictment. They are inconsistent with the statement of the manner and means by which moneys were misapplied, and inconsistent with the charge that they were so misapplied with intent to injure and defraud the bank. The statement made by the court in the presence of the jury in overruling the objection is rugged and vigorous, but not more so than the occasion demanded. And the extract from that statement made in the assignment of error is relieved of its apparent acerbity when taken in connection with the context, as appears on pages 102, 103.

> The objection is overruled. I think that if a bank president, from any sinister purpose, either to cover past dereliction of duty or otherwise, allows himself to get in the hands of outsiders, and then he willfully misapplies the money on sham paper, paper that he knows to be worthless, and the parties that present it knew it to be worthless, that they do in point of fact touch each other in such sense as that there is a prin-

> cipal on one side and aiders and abettors on the other. It would be a sorry state of the law if a corrupt banker, standing on the inside of the counter, could loot the bank in favor of criminals that stood on the outside of the counter, and there was no law to reach them.

Now it must be noticed that this statement of the court was not made in a charge or instruction to the jury, but fell in the course of a colloquy between court and counsel which appears to have been marked by fervid animation.

The counsel for the defense was objecting to the introduction of evidence on the grounds already considered here in these assignments of error, and after the court had overruled the objection upon those grounds, counsel stated as an additional ground of objection "that it appears in the indictment that this was in the nature of a loan by the bank to the Indianapolis Cabinet Company," and then the court met that ground of objection by the language quoted.

II.

> That the court erred in permitting the witness Edward Hawkins, who was receiver of the bank, to testify as to his classification of the assets of said bank as scheduled and forwarded to the Department. The same witness had just stated that the total face assets of the bank were $2,098,268.65. The witness was then asked the question: "What was the general character of the assets—that is, as to being good, worthless, or doubtful?" The answer was: "The assets were scheduled and forwarded to the Department as, good assets, $878,946.04."

If this had been a civil proceeding, the direct object of which was to ascertain the character and value of the assets in order to their administration, it might perhaps have been proper to require that the precise amounts in value of each class of the assets should more accurately appear, as in a master's report. But here the object of the testimony was to show the fact that the assets of the bank had been misapplied and wasted, and not to show to a dollar the precise extent to which such misapplication had gone. The witness, who as receiver was charged with the duty of collecting the assets, was competent to express his opinion as a witness as to the value of the assets as a whole or separate.

The "schedule" which he had prepared and forwarded to the Department was only an expression in writing of the result which he was here testifying to. That written schedule, if it had been produced and offered in evidence on this trial, would have been properly rejected as inadmissible as against these defendants, and could have served no other purpose than to enable the witness to refresh his memory as to the matters which he had there written. It appears from the matters stated on pages 96 and 97 that the witness did not need to have his memory refreshed.

III.

The court erred in permitting the same witness to testify as to the value of the assets of the Wooten Office Desk Company, the witness not having shown that he had made any investigation of the affairs of said company or had any knowledge thereof.

The proceedings will be found on page 98, where it appears that the actual fact was that the following question was put to the witness:

> Mr. Hawkins, after your investigation, what, in your judgment, is the value of the claim of the Indianapolis National Bank against the Wooten Office Desk Company, of Richmond, of $48,565.33?

From which it appears that the witness Hawkins had made an investigation and that his judgment was formed from the result of that investigation.

From the proceedings which are recorded on page 98 it appears that the real ground of objection was not that the witness had made no investigation, but that he had made it through attorneys.

> Our objection is on the ground that the witness has not shown to have any knowledge whatever of the assets of the Wooten Office Desk Company, or to have made any personal investigation or inquiry about it. The information is simply derived from hearsay. All that he has is derived from correspondence with an attorney. He has not shown that the attorney himself has made any inquiry in the matter.

To which it may be suggested in reply that nearly all the information as to commercial values and standing in the world to-day is derived through attorneys. Bradstreet's agents, in every city and town of the country, are attorneys.

Mr. Hawkins, the receiver of this bank, the nominal assets of which were $2,098,262.65, doubtless employed at once an attorney competent to advise and direct him in

the execution of his trust, or else employed the attorney for the bank. If among the assets of the bank was found this claim against the Wooten Office Desk Company, of Richmond, the most obviously reasonable and proper course for the receiver was to lay the matter before his legal adviser and instruct him to ascertain, through *his* legal correspondent at Richmond, the value of the claim. The result of an inquiry, so prosecuted, would be far more reliable than one obtained from the unaided researches of the receiver himself.

IV.

Appears to have been omitted, page 149.

VII.

> The court erred in allowing the Government to introduce in evidence a check for $5,802.84 in support of a count which called for a check of £1,194.

This is not exactly the state of the case. The count (p. 3) charges that Haughey, the president, received from the Cabinet Company its bill of exchange drawn on the Desk Company, of England, for £1,194, and placed the same to the credit of the Cabinet Company upon the books of the bank. That the Cabinet Company then drew its check "for said sum upon the said bank," which check was, by the direction of Haughey, paid by the bank.

The criticism involved in this objection assumes the premise that the word "sum" imports identity in kind, as well as in amount.

Stormonth says that "sum" is from "*summa*, the amount," and he defines it "that which two or more num-

bers, quantities, or particulars form when added together; the amount or whole of anything; the total; a quantity of money, etc."

Five dollars is the sum of five hundred cents. It is the sum of the exact equivalent in any foreign coin, and in that sense, doubtless, is the word "sum" used in the count. In treating of this objection in subdivision "*e*" of assignment I, we said that it would depend upon the evidence before the jury. It is stated in the bill of exceptions on page 104.

> Evidence was introduced by the Government, showing that the value of a pound sterling varied in the money of the United States from about $4.85 to $4.89 during said period, depending upon the demand for exchange.

The court in its instructions to the jury (p. 125), referring to this transaction, charged as follows:

> The acceptance by any officer of a bank of a bill of exchange or draft is an unlawful act, unless it is drawn in good faith against actually existing values. No officer of a bank has any right to accept any bill, draft, or other paper, and give credit therefor on the books of the bank, as a cash credit, unless such officer at the time of its acceptance honestly believes such bill, draft, or paper to be the actual equivalent of a like amount of money.

So that the fact was submitted to the jury upon the evidence, carefully guarded by the instructions of the court.

VIII.

> The court erred in stating in the presence of the jury, during the examination of the witness Horton,

that in his judgment the Desk Company had not a cent's interest in the business or property held in its name, at Richmond or in Indianapolis, and in refusing to permit the witness to be cross-examined touching the same by the defendants.

On page 103 it appears that the question propounded on cross-examination was this:

> I will ask you to what extent the business of the receiver there has consisted in the disposal of the Wooten desks?

This was objected to by counsel for the Government as not cross-examination. And thereupon the court said:

> It does not appear from the testimony of this witness that the Wooten Company have a cent's interest in this. It may be that the jury will view it differently from what I do. I simply say that in my judgment, the whole evidence shows that in all this stuff the Wooten Company had not one single cent—not a cent. It is not a cross-examination, and I will sustain the objection.

Counsel for the defendant then said that their object was to show the value of the property and the business the company was doing.

The court said:

> You may show anything over there. You ask him what orders he had there. The objection made was that the witness was testifying to work that was done here by the Indianapolis Cabinet Company and never passed out of the ownership and control of the Indianapolis Cabinet Company, and with which the Wooten Company had no more to do than I had.

In the bill of exceptions, on page 92, it is certified:

That evidence was introduced on behalf of the Government tending to prove that from time to time during the last five years the defendants, Francis A. Coffin and Percival B. Coffin, had caused to be organized a number of other corporations, to wit: The United States Office Furniture Company, The Indianapolis Office Furniture Company, The Indianapolis Veneer and Panel Company, The Indiana Cabinet Company, The Indianapolis Desk Company, and The Wooten Office Desk Company, and had obtained control of the Indianapolis Plow Company; in the name of which several corporations the defendants had caused indebtedness to be incurred to the Indianapolis National Bank by notes, drafts, bills of exchange, etc. Several of said corporations having no assets, others of the same having assets largely disproportioned to the amount of said indebtedness so incurred, by means of which corporations said Indianapolis Cabinet Company had procured to its own use of the moneys, funds, and credits of said bank to like amounts; that said corporations were organized and operated with a view to enabling the Indianapolis Cabinet Company to procure in their names a larger credit in said Indianapolis National Bank, and to evade the law forbidding money exceeding 10 per cent of the capital stock of the bank to be loaned to any one person; the said several corporations being under the absolute control of the said defendants as the executive officers and directors of the said Indianapolis Cabinet Company.

The defendants offered evidence tending to prove that—

Said corporations were organized and carried on for the purpose of facilitating the business of manufacturing and selling desks under the general control of the Indianapolis Cabinet Company.

In referring to this feature of the transactions the court in its charge to the jury said, pages 136, 137:

> The evidence shows that the defendants organized a number of corporations, ostensibly for the conduct of business in this city, in Richmond, Ind., and in the cities of Boston, New York, and London, England. These corporations seem to have had little substantial capital—and to have been used as mere instrumentalities for furthering the purposes of the defendants as the corporators and owners of the Indianapolis Cabinet Company. It will be for you to determine whether they were organized and conducted as legitimate corporations, or whether they were intended to be used as instrumentalities to more successfully obtain moneys, funds, and credits from the Indianapolis National Bank.

VIII½.

> Because the court refused to require the Government to elect and specify the particular transaction in each of the general counts, from the seventeenth to the thirty-sixth, inclusive, upon which it relies as a substantive charge and upon which it will claim a conviction of the defendants, or either of them.

Inasmuch as the court has sustained the motion in arrest of judgment as to each and all of these counts (p. 90), the ruling of the court herein complained of can not avail as grounds of error in the judgment here.

Notwithstanding this, however, counsel for plaintiffs in error, in their brief (pp. 43 to 48), devote much space to arguing with great earnestness the matter on the ground that the effect of the refusal of the court to compel the Government to elect was "that the Government

And in section 295—

> Whether the court will compel a prosecuting officer to elect which count to proceed on rests in the discretion of the court and can not ordinarily be assigned for error.

We prefer to rely upon the well-considered conclusions reached from a thorough and intelligent review of all the cases by the two eminent text writers to whom we have referred, rather than present our own review of the cases cited by counsel in their brief and our criticism of the conclusions which they have drawn from these cases. (See *Pointer* v. *United States*, 151 U. S., 402; *Commonwealth* v. *Bennett*, 118 Mass., 443.)

VIII⅛.

> In permitting the Government to prove the organization of "The Indianapolis National Bank" under an indictment charging that the name of said bank was "The Indianapolis National Bank of the City of Indianapolis, in the State and District of Indiana."

That the indictment does not charge that to be the name of the bank, but simply "The Indianapolis National Bank," will become apparent from examination of the several counts.

In the first count it is said to have been "known as the Indianapolis National Bank of the City of Indianapolis, in the State and District of Indiana."

In the second count it is "Indianapolis National Bank of Indianapolis, in the State of Indiana."

In the twenty-fourth count as "The Indianapolis National Bank of the City of Indianapolis, in the State and District of Indiana."

In the twenty-fifth count it is the same, omitting the word "city," while in the forty-eighth count it is "The Indianapolis National Bank of the city of Indianapolis, in the State and district of Indiana *aforesaid*."

From which it would seem that the pleader stated "The Indianapolis National Bank" as the name of the bank; and all that follows in the several counts, varying, as we have seen, in very many of them, was not intended as part of the name or designation of the bank at all.

VIII½.

> That the court overruled defendants' motion for continuance on the ground of disability of counsel.

This motion was supported by affidavits (pp. 69–74). These affidavits state:

> That on the 17th day of April, 1894, defendants' said attorney (A. C. Harris) accidentally sustained serious bodily injuries, which have since confined him to his house and prevented his participation in the defense of this cause (p. 73).

And yet, in the proceedings of the trial of the cause it appears (p. 69) that on the 18th of April, 1894, Mr. Addison C. Harris was present as one of the attorneys for the defendant, participating in the trial. There was a suspension of the trial from the 18th to the 24th of April—and it appears on page 68 that on the 24th of April, 1894, Mr. Addison C. Harris was present in court. So the statements in the affidavits that Mr. Harris was confined to his bed and unable to attend court from the 17th to the 26th of April, are contradicted by the records of

the court during that period. To this the court may have referred in the order appearing on page 74, "and the court having heard argument and being sufficiently advised, doth now overrule said motions."

The remaining errors assigned are to the action of the court in refusing certain instructions asked for by the defendants, and to granting certain instructions embraced in the general charge of the court to the jury.

A careful examination of the charge delivered by the court to the jury will disclose the fact that it embraces every subject covered by the instructions asked for by the defendants. It presents to the jury the whole law governing the case in a thoroughly systematic and logical method.

The substance of the second, third, fourth, and fifth instructions asked for by the defendant (p. 151) will be found embraced in the charge of the court, pages 129 and 130.

The seventh, eighth, ninth, and tenth instructions are covered by the charge of the court, pages 128 and 130.

The eleventh, twelfth, thirteenth, fourteenth, and fifteenth instructions are covered by the charge of the court, pages 126, 128, and 129.

The sixteenth, seventeenth, eighteenth, nineteenth, and twenty-first instructions are covered by the charge on pages 130–133.

The twentieth, twenty-second, and twenty-second and one-half instructions are covered by the charge on page 135.

As to the twenty-third to the thirty-first, inclusive, referring to the burden of proof, to show that facts and

names charged in the indictment to be unknown to the grand jurors were known to them, it is perhaps enough to say in reply that the charge was properly so made. (1 *Bish. Crim. Proc.*, secs. 493 to 498, 546, and 553.)

> The burden of proof is on the defendant to show that the grand jury at the particular time of the finding knew the name. (*Whar. Crim. Ev.*, 8th ed., sec. 97.)

In *Blodgett* v. *State* (3 Ind., 403), cited in plaintiffs' brief, page 65, the ground for reversing the judgment there is thus stated:

> We think it was the duty of the grand jury in the case before us to inquire of the witness before them for the name of the person to whom the liquor was sold. It appears that if they had made the inquiry the name would have been given them.

Yet in *Commonwealth* v. *Stoddard* (9 Allen, 280), (also cited p. 65 of plaintiffs' brief), Judge Gray said:

> It is no part of the duty of jury of trials to judge what the grand jury could or ought to have known and make that the test of what they did know and thus create a variance where the indictment precisely corresponds with the fact.

The thirty-second and thirty-third instructions are covered by the charge on pages 129 and 130.

The thirty-fourth, thirty-fifth, thirty-sixth, and thirty-six and one-half are covered by the charge on pages 135, 136, and 137.

The thirty-seventh instruction was not relevant to any evidence offered in this case, or to any count in the indictment.

As to the thirty-ninth and other instructions, relating to "reasonable doubt," the charge of the court throughout covers it.

On page 135, the court said:

> To justify you in returning a verdict of guilty, the evidence must be of such a character as to satisfy your judgment to the exclusion of every reasonable doubt.
>
> If, therefore, you can reconcile the evidence with any reasonable hypothesis consistent with the defendants' innocence, it is your duty to do so, and in that case find the defendants not guilty. And if, after weighing all the proofs and looking only to the proofs, you impartially and honestly entertain the belief that the defendants may be innocent of the offenses charged against them, they are entitled to the benefit of that doubt and you should acquit them.

And then follows a definition, clear and full, of what is meant by "reasonable doubt."

Looking now more specifically to what are complained of as errors in the action of the court, we find on pages 49 and 50 of the brief for plaintiffs in error the views of counsel as to the refusal of the court to give the second instruction, page 151. That instruction required that it should be found by the jury not only that the defendants, or one of them, has committed some wrongful act, but that he has committed the precise act charged in some one or more of the counts.

The court said, on page 129:

> And if the defendants (naming them) are shown by the proofs beyond a reasonable doubt to have unlawfully and knowingly and with a like intent to

injure and defraud said bank, aided and abetted the said Haughey, knowing him to be president of the bank, in unlawfully and wilfully misapplying the moneys, funds, and credits of said bank, by converting the same to the use and benefit of the Indianapolis Cabinet Company, *as charged in the several counts of the indictment relating to that subject*, then they are guilty of the offense charged against them.

And again, on page 130:

> Before you can find any one of the defendants guilty you must be satisfied of his guilt as charged in some one of the counts of the indictment beyond a reasonable doubt.

The thirty-seventh instruction (p. 121) was as to the statute of limitations for three years, and appears to have been intended to enforce some distinction between notes given at the time of a loan from the bank and notes subsequently given in renewal of the first. Of course, so far as the national banking act is concerned and criminal proceedings had thereon, all notes must be regarded as evidencing loans made at their date. Each successive renewal is, in the sight of the law, a new loan. On page 134 the court instructed the jury that—

> The defendants can not be convicted for any of the offenses charged, unless the same are shown to have been committed within three years next preceding the finding and return of the indictment, which was on the 21st day of December, 1893.

On pages 52 to 55 of plaintiffs' brief is considered the refusal of the court to give instructions Nos. 7 and 8 (Rec., p. 152).

These instructions are contrived upon the theory, that if Mr. Haughey believed he was doing right he can not be convicted of doing wrong.

In *United States* v. *Fish* (24 Fed. Rep., 588), Judge Benedict, referring to the Britton cases (108 U. S., 193, etc.), said:

> The proper conclusion to be drawn from the *Britton cases* taken together seems to be this, that the honest exercise of official discretion, in good faith, without fraud, for the advantage or supposed advantage of the association, is not punishable; but if official action be taken, not in the honest exercise of discretion, in bad faith, for personal advantage, and with fraudulent intent, it is punishable.

Every man is responsible for the natural and reasonable consequences of his own intelligent acts; and will be presumed in criminal as in civil cases to have intended such consequences.

> A felonious intent in the criminal law, like malice, means "the willful doing of an injurious act without lawful excuse." *Shaw, C. J., in Yorke's Case*, 9 Met., 93.)

In the case of *Reynolds* v. *The United States* (98 U. S., 145), this court held that the belief of the accused that polygamy was a religious duty was no defense on an indictment for bigamy.

So in *United States* v. *Anthony* (11 Blatch., 200), where that strong-minded person, Miss Anthony, assumed to exercise the rights of a citizen by voting at an election, for which she was indicted under the act of Congress that

imposed fine and imprisonment on any person who shall "knowingly vote without having a lawful right to vote." Her belief was insufficient as a defense.

Now instructions No. 7 and No. 8. The court was asked to instruct the jury that if they found upon the whole proof that Mr. Haughey "believed that under all the circumstances so to do was for the best interests of the bank," that although what he did do was exactly the thing which the statute said he should not do, and affixed a penalty for doing, yet they must find him not guilty, because, while he did do the prohibited things, he believed them for the best interests of the bank. If this rule prevailed, no derelict or faithless officer of a national bank could ever be punished. His "belief," his "good intentions" will always be to him a shield behind which no judicial inquisition can explore.

As to Nos. 12 and 13 (p. 55, plaintiff's brief, and 154 Rec.). There was no evidence before the jury, so far as this record discloses, to which the theory suggested in these instructions was at all pertinent. For some reason, not apparent, the plaintiffs in error have not seen proper to spread upon the record all the evidence which was before the jury on the trial of this cause, or obtain from the court a certificate of the facts proven. Had that been done, it would have been far easier to have reviewed intelligently the conduct of the court below in its rulings and delivery of the law to the jury. On pages 133 and 134 the subject is considered in the charge of the court.

The instructions Nos. 18 and 19 (pp. 59–63, plaintiffs' brief; 157–158 Rec.) relate to "false entries," and state to

the jury what does and what does not constitute a false entry. The court below, in its charge, p. 132, instructed the jury that—

> Any entry on the books of the bank, which is knowingly and purposely made to represent what is not true, or does not exist, with intent either to deceive the officers of the bank or to defraud the association, or to deceive any officer appointed to examine the affairs of the association, is a false entry within the meaning of the statute, making it a criminal offense.

And this is followed in immediate connection with the application by the court to the definition of the evidence before the jury.

Instructions Nos. 23–32 (plaintiffs' brief, pp. 63–69; pp. 160–163, Rec.) relate to the averments in the indictment of the facts which were to the grand jurors "unknown." This we have already considered under another head.

As to the forty-fourth instruction (p. 72, plaintiffs' brief; p. 168, Rec.), which related to the presumption of innocence of the defendants, while the court did not employ the language of this instruction in its charge, or refer to this presumption of innocence, to which all accused persons are entitled, it was doubtless because under the evidence in this case such a caution to the trial jury was unnecessary. Technically, criminal intent must appear to the exclusion of all reasonable doubt as an essential element in every crime. But it is too apparent to admit of debate that in criminal proceedings under the national banking act the juries are more concerned in the ascertainment of

the acts done or omitted to be done than they are with the matter of intent or motive; because where the acts are done they will be presumed to have been done intentionally; and all the natural and reasonable consequences of them will be presumed to have been intended.

The fact of a bank president discounting a note, unsecured, of an insolvent maker, the want of security and the insolvency being at the time known to the president, and such discount being for the benefit of the insolvent maker and to the injury of the bank, will of itself justify a jury in finding that the act was done with intent to defraud the bank. And so it is, that throughout the charge given by the court to the jury they are cautioned that in order to guilt and conviction they must find the presence of criminal intention on the part of the defendants. And this of itself was sufficient in this case, because the jury were thereby instructed that until such criminal intent was found by them beyond all reasonable doubt the defendants could not be found guilty.

A great deal is said in the brief for plaintiffs in error about the burden of proof never shifting in a criminal case; and many cases are cited in support of this proposition, which in a certain sense—and in a certain sense only—is true. The evidence to convict one of crime must be such as to persuade the judgment to the exclusion of what is called all reasonable doubt. The accused is presumed to be innocent, and this presumption attends him throughout every stage of the case. The burden is upon the Government to prove every fact necessary to the establishment of the guilt of the accused.

But test the soundness of this proposition, which is stated without any qualification, that the burden of proof never shifts in a criminal case. A man is indicted for murder by poisoning. The accused and the deceased were strangers in the city where the event occurred. Three intelligent and reliable witnesses concurred in proving that they saw through a window the accused pour from a bottle, which stood alone, a certain powder into a spoon, mix it with water, give it to the deceased a few minutes before her death. Upon the arrest of the accused the bottle was found upon his person. An examination disclosed that it was strychnia. An autopsy of the deceased ascertained the presence of strychnia in the stomach, and that death was caused thereby. Would not a jury upon those facts be justified under the law in finding a verdict of guilty?

Would any further fact be required to be proven by the government? Surely, for the exoneration of the defendant the burden of proof must shift. That he was an attendant, acting under the instructions of a foreign physician; that he was himself a foreign physician, acting professionally in this matter, could only be shown by shifting the burden of proof. In no other sense do we understand the court below to have given any part of his charge to the jury.

There are some other grounds of objection suggested in the assignments of error in the record, but which are not referred to in the brief, which will be noticed now.

The presiding judge in the court below, in the progress of the trial, gave expression in his colloquies with counsel

to certain views of the evidence which he then entertained; and this complaint is made in the record.

The relation between the court and the jury in the Federal courts is quite different from that which exists in the State courts, in the matter of expressions of opinion by the court in the hearing of the jury.

In *Starr* v. *United States* (153 U. S., 624), Mr. Chief Justice Fuller, speaking for the entire court, said:

> It is true that in the Federal courts the rule that obtains is similar to that in the English courts, and the presiding judge may, if in his discretion he think proper, sum up the facts to the jury, and if no rule of law is incorrectly stated, and the matters of fact are ultimately submitted to the determination of the jury, it has been held that an expression of opinion upon the facts is not reviewable on error. He should take care to separate the law from the facts, and to leave the latter in unequivocal terms to the judgment of the jury, as their true and peculiar province. As the jurors are the triers of facts, expressions of opinion by the court should be so guarded as to leave the jury free in the exercise of their own judgments. They should be made distinctly to understand that the instruction is not given as to a point of law by which they are to be governed, but as a mere opinion as to the facts to which they should give no more weight than it is entitled to.

On pages 139 and 168 of the record there appears the exception taken to that portion of the charge of the court to the jury, of which an extract is there made. The grounds of exception stated near the top of page 140 do not correctly express the language or meaning of the court. The court did not say that "as a rule the fixing

of the punishment is left by Congress to the courts." Nor did the court say that "funds deposited in a bank are trust funds," or that "an officer of a bank has no right to loan funds to persons of doubtful solvency." What the court did say was:

> The funds intrusted to banks represent the scanty savings of the poor men and women of the country, as well as the larger accumulations of the rich; and their preservation from loss by careless and improvident loans constitutes a trust of the most sacred character. No officer of a bank has any right to hazard the loss of any such trust funds by making loans of them to parties of doubtful solvency or upon doubtful securities.

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